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ANNOTATED RULES

May 2007 Supplement to the 2007 Edition

Prepared Under the Supervision of
THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA
by
The Editorial Staff of the Publisher

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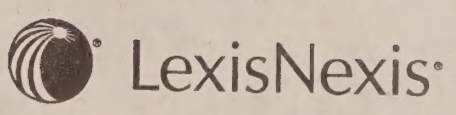

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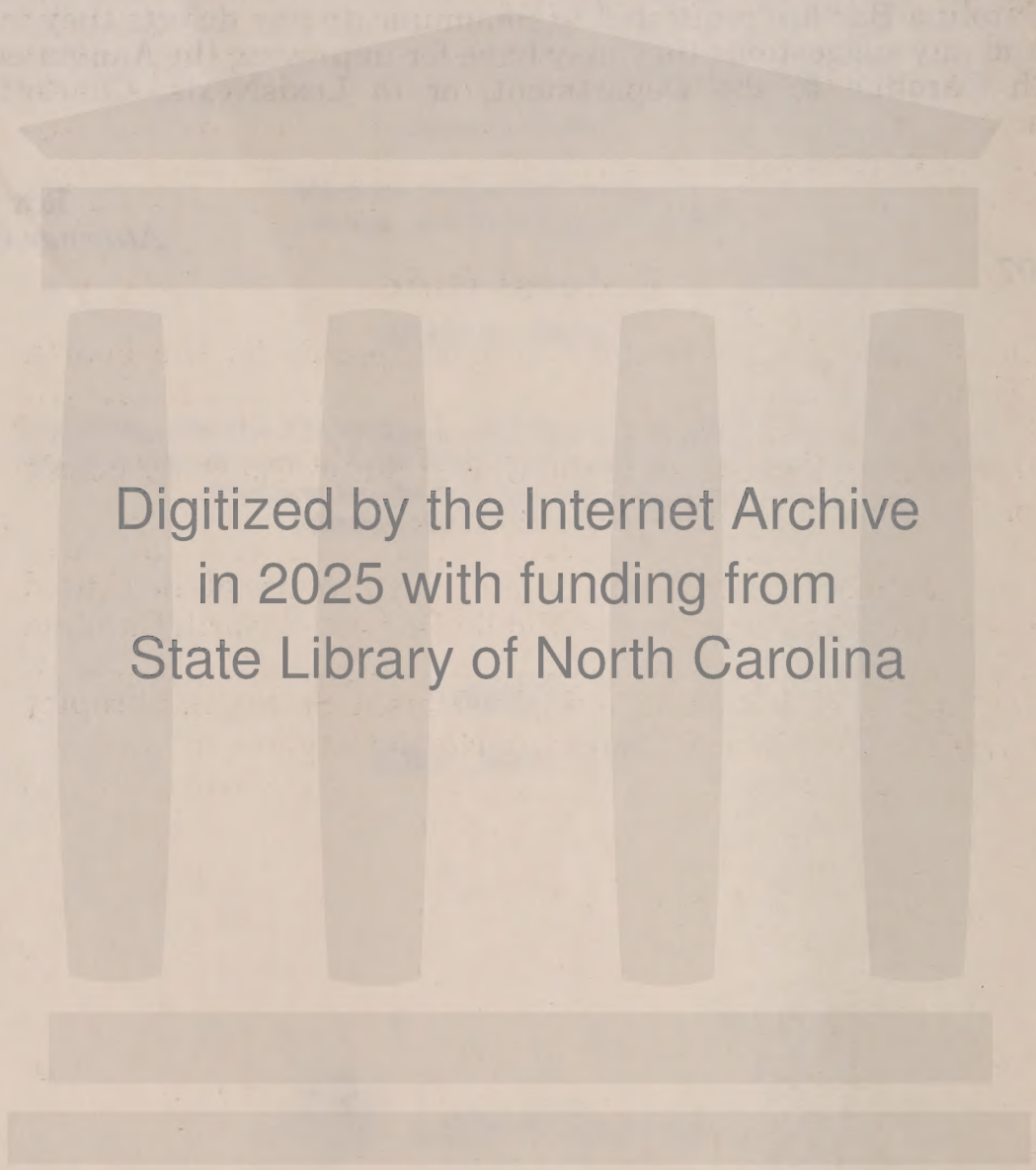
Preface

This May 2007 Supplement to the 2007 Edition of the Annotated Rules of North Carolina contains amendments to the rules of the courts of North Carolina and those federal rules set out in the 2007 Edition affected by orders promulgated since the publication of the 2007 Edition through April 15, 2007. It also contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of appropriate federal courts posted on LEXIS through April 6, 2007.

This publication has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find herein and any suggestions they may have for improving the Annotated Rules of North Carolina to the Department, or to LexisNexis, Charlottesville, Virginia.

ROY COOPER
Attorney General

May 2007



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GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

Rule 12. Courtroom decorum.

CASE NOTES

Prosecutor's Closing Argument Did Not Violate Due Process. —

Defendant's objection to a prosecutor's closing argument, in which the prosecutor stated that defense counsel's job was "to defend [and] not to explain, not to be even, not to be fair," was properly overruled, as: (1) the prosecutor neither used abusive, vituperative, and opprobrious language, nor did the prosecutor's comments amount to an offensive personal reference about defense counsel; (2) the prosecutor's statements attempted to explain the role of defense counsel, but did not attack defense counsel; (3) when considered within the context of the prosecutor's entire closing argument, the statements did not violate G.S. 15A-1230(a) or defendant's due process rights under the Fourteenth Amendment and N.C. Const., Art. I, § 19; and (4) defendant failed to show how the prosecutor's statements prejudiced defendant. State v. Brown, — N.C. App. —, 641 S.E.2d 850, 2007 N.C. App. LEXIS 574 (2007).

RULES IMPLEMENTING STATEWIDE MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT CIVIL ACTIONS

Rule 2. Selection of mediator.

CASE NOTES

Dismissal Upon Failure to Select Mediator Was Error. — Both G.S. 7A-38.1(h) and Rules of the North Carolina Supreme Court implementing Statewide Mediated Settlement Conferences in Superior Court Civil actions 2C contemplated that if the parties to a lawsuit failed to agree on a settlement conference mediator or that plaintiff failed to report this to the senior resident superior court judge, that the judge was to have appointed a mediator; trial court's dismissal of an action after the parties failed to agree on mediator was error. Gailey v. Triangle Billiards & Blues Club, Inc., — N.C. App. —, 635 S.E.2d 482, 2006 N.C. App. LEXIS 2132 (2006).

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Adopted June 13, 1975,
with amendments effective through March 1, 2007.

Article II. Appeals from Judgments and Orders of Superior Courts and District Courts

Rule
7. Preparation of the transcript; Court reporter's duties.
9. The record on appeal.
11. Settling the record on appeal.
12. Filing the record; Docketing the appeal; Copies of the record.

Article IV. Direct Appeals from Administrative Agencies to Appellate Division

18. Taking appeal; Record on appeal — Composition and settlement.

Article VI. General Provisions

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28. Briefs: Function and content.
37. Motions in appellate courts.

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D. Forms.

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ARTICLE I. APPLICABILITY OF RULES

Rule 2. Suspension of rules.

CASE NOTES

Reliance on Rule Presumed Constitutional at Time of Trial. — Because under G.S. 8C-1-103(a)(2), which was later held unconstitutional but had been presumed constitutional at the time of trial, the trial court had assured defendant that he did not need to renew his objections to the evidence when it was offered at trial, the appellate court would review defendant's arguments as to the affected evidence. State v. Grant, — N.C. App. —, 632 S.E.2d 258, 2006 N.C. App. LEXIS 1637 (2006), cert. denied, appeal dismissed, 361 N.C. 223 (2007).

Power to Resolve Case in the Interests of Justice. —

When defendant was convicted of perjury and false statements for executing an affidavit of indigency stating that he had no interest in real property when his girlfriend had placed his name on a deed of trust on property she owned, an appellate court reviewed the merits of his conviction, even though he had not moved to dismiss at the close of all the evidence and had thus not preserved the issue for appeal, under N.C. R. App. P. 10(b)(3), because under N.C. R. App. P. 2 it determined it would "prevent manifest injustice" to defendant to review his convictions. State v. Denny, — N.C. App. —, 635 S.E.2d 438, 2006 N.C. App. LEXIS 2158 (2006).

Review of Significant Issues Warranted. —

Although petitioner failed to cite in the record on appeal the record pages corresponding to each of her assignments of error, the appellate court was able to determine the issues in the case; therefore, as petitioner's violation of the N.C. Rules of Appellate Procedure was not so egregious as to invoke dismissal, the appellate court would review the issues pursuant to N.C. R. App. P. 2. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

Although the appellants' brief did not conform completely to the mandates of the North Carolina Rules of Appellate Procedure, thereby subjecting their appeal to dismissal, the appellate court nevertheless elected to reach the merits of their appeal; the court found that it was proper not to dismiss the appeal because, inter alia, the court did not believe that the appellees were substantially prejudiced as the appellants' assignments of error were specific enough to put the appellees on notice of the contested issues and upon what basis the court might rule, and maintaining the integrity of the laws through proper interpretation and application outweighed the importance of dismissal

in a case in which the rules violations had little to no impact. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Discretion of Appellate Court. —

Citizens who sought to block the building of a modular school abandoned their assignment of error to the trial court's dismissal of their claims based on mootness under N.C.R.A.P., Rule 28(b)(6) because they submitted no authority in support of their contention that the trial court erred in concluding that their claims were moot; nevertheless, pursuant to its discretion under N.C.R.A.P., Rule 2, the appellate court elected to suspend the appellate rules and to reach the merits of the mootness contentions. Citizens Addressing Reassignment & Educ., Inc. v. Wake County Bd. of Educ., — N.C. App. —, 641 S.E.2d 824, 2007 N.C. App. LEXIS 593 (2007).

Although an employee's brief failed to comply with N.C. R. App. P. 28(b)(4) and (6) by failing to include a statement of the grounds for appellate review and a concise statement of the applicable standards of review for each question, the rule violations, while serious, were not so egregious as to warrant dismissal of the appeal because: (1) reaching the merits of the case did not create an appeal for the employee or cause the court to examine issues not raised by the employee; and (2) the employer was given sufficient notice of the issues on appeal as evidenced by the filing of its brief thoroughly responding to the employee's arguments; as a result, the court elected to review the merits of the employee's appeal pursuant to N.C. R. App. P. 2. Hassell v. Onslow County Bd. of Educ., — N.C. App. —, 641 S.E.2d 324, 2007 N.C. App. LEXIS 487 (2007).

Lack of Jurisdiction. —

Appellate court was without jurisdiction to hear a father's appeal of a termination of parental rights case under circumstances in which the father failed to satisfy the jurisdictional requirement of filing a notice of appeal and including the same in the record on appeal; without proper notice of appeal, the appellate court acquired no jurisdiction and neither the court nor the parties could have waived the jurisdictional requirements even for good cause. In re Me.B., — N.C. App. —, 640 S.E.2d 407, 2007 N.C. App. LEXIS 364 (2007).

Appellants' appeal was dismissed, etc.

When viewed in toto, the nature and number of appellate rules violations in a husband's appellate brief, combined with the absence of any compelling justification for suspending the rules pursuant to N.C. R. App. P. 2, justified dismissal of his appeal; further, it was unnecessary to invoke Rule 2 to prevent manifest injustice to a party, or to expedite decision in the public interest. Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Significant Procedural Violations Render Rule's Invocation Improper. — Defendant's notice of appeal did not reference the order denying his motion to suppress as required under N.C. R. App. P. 3(d), and given the significant violations of the court's rules, invoking N.C. R. App. P. 2 to address the issue would have amounted to creating an appeal for defendant. State v. McDougald, — N.C. App. —, 638 S.E.2d 546, 2007 N.C. App. LEXIS 90 (2007).

Merits of Claim of An Incorrect Sentence Calculation Were Considered Despite Failure to Properly Set Forth Assignment of Error. — Because of the potential impact on defendant's sentence from an incorrect prior record level calculation and because of the substantial delay defendant had endured in having his appeal heard, the appellate court choose to invoke N.C. R. App. P. 2 notwithstanding defendant's failure to properly set forth his assignment of error. State v. Mullinax, — N.C. App. —, 637 S.E.2d 294, 2006 N.C. App. LEXIS 2384 (2006).

Applied in State v. Brown, — N.C. App. —, 631 S.E.2d 49, 2006 N.C. App. LEXIS 1311 (2006); State v. Hill, — N.C. App. —, 632 S.E.2d 777, 2006 N.C. App. LEXIS 1636 (2006); State v. Holt, — N.C. App. —, 639 S.E.2d 65, 2007 N.C. App. LEXIS 22 (2007).

Cited in State v. Locklear, — N.C. App. —, 636 S.E.2d 284, 2006 N.C. App. LEXIS 2248 (2006); State v. Smith, — N.C. App. —, 636 S.E.2d 267, 2006 N.C. App. LEXIS 2251 (2006); Jones v. Harrelson & Smith Contrs., LLC, — N.C. App. —, 638 S.E.2d 222, 2006 N.C. App. LEXIS 2521 (2006).

ARTICLE II. APPEALS FROM JUDGMENTS AND ORDERS OF SUPERIOR COURTS AND DISTRICT COURTS

Rule 3. Appeal in civil cases — How and when taken.

CASE NOTES

I. In General.

I. IN GENERAL.

No Certificate of Service. — When the father in a child support case failed to include in the record a certificate of service of the notice of appeal, this was a violation of N.C. R. App. P. 3 and N.C. R. App. P. 26, and the appeal was dismissed; the mother had not waived the father's failure to include the proof of service, and such a failure was not inconsequential. Ribble v. Ribble, — N.C. App. —, 637 S.E.2d 239, 2006 N.C. App. LEXIS 2293 (2006).

Father's appeal of an order adjudicating his son as neglected and his daughter as abused and neglected was dismissed as the father failed to attach to the notice of appeal a certificate of service acknowledging service of all parties to the action as required by N.C. R. App. P. 3 and N.C. R. App. P. 26; a department of social services and a guardian ad litem did not waive the father's failure to include proof of service of his notice of appeal. In re C.T., — N.C. App. —, 641 S.E.2d 414, 2007 N.C. App. LEXIS 501 (2007).

Failure to Appeal Underlying Judgment. —

Order granting a property owner summary judgment on an individual's claim seeking reconveyance of property was not properly before the appellate court where the individual's notice of appeal only referenced the order denying her G.S. 1A-1-59 motion and in the absence of proper notice of appeal, the appellate court lacked jurisdictio to review the order of summary judgment. Sellers v. Ochs, — N.C. App. —, 638 S.E.2d 1, 2006 N.C. App. LEXIS 2305 (2006).

Notice of Appeal Insufficient. —

Where a father failed to include in his notice of appeal an order granting a continuance in a child abuse proceeding brought against him, the appellate court dismissed the assignment of error as to that issue pursuant to N.C. R. App. P. 3(d). In re C.B., — N.C. App. —, 636 S.E.2d 336, 2006 N.C. App. LEXIS 2237 (2006).

Defendant's notice of appeal did not reference the order denying his motion to suppress as required under N.C. R. App. P. 3(d), and given the significant violations of the court's rules, invoking N.C. R. App. P. 2 to address the issue would have amounted to creating an appeal for defendant. State v. McDougald, — N.C. App. —, 638 S.E.2d 546, 2007 N.C. App. LEXIS 90 (2007).

Failure to Give Notice of Appeal. —

Appellate court was without jurisdiction to hear a father's appeal of a termination of parental rights case under circumstances in which the father failed to satisfy the jurisdictional requirement of filing a notice of appeal and including the same in the record on appeal. In re Me.B., — N.C. App. —, 640 S.E.2d 407, 2007 N.C. App. LEXIS 364 (2007).

Cited in In re Will of McFayden, — N.C. App. —, 635 S.E.2d 65, 2006 N.C. App. LEXIS 2053 (2006); Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Rule 4. Appeal in criminal cases — How and when taken.

CASE NOTES

I. In General.

I. IN GENERAL.

Defendant Not Entitled to Blakely Review. — Defendant's case was not pending on direct review when Blakely was decided, and was "final" before that decision, and defendant thus was not entitled to Blakely review upon a writ of certiorari; defendant failed to perfect an appeal from the final judgment, and thus the time for appeal expired 14 days after judgment finally was entered. State v. Coleman, — N.C. App. —, 640 S.E.2d 784, 2007 N.C. App. LEXIS 256 (2007).

Cited in Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Rule 7. Preparation of the transcript; Court reporter's duties.

(a) *Ordering the transcript.*

(1) *Civil cases.* Within 14 days after filing the notice of appeal the appellant shall arrange for the transcription of the proceedings or of such parts of the proceedings not already on file, as the appellant deems necessary, in accordance with these rules, and shall provide the following information in writing: a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter or other neutral person designated to prepare the transcript; and, where portions of the proceedings have been designated to be

transcribed, a statement of the issues the appellant intends to raise on appeal. The appellant shall file the written documentation of this transcript arrangement with the clerk of the trial tribunal, and serve a copy of it upon all other parties of record, and upon the person designated to prepare the transcript. If the appellant intends to urge on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the appellant shall file with the record on appeal a transcript of all evidence relevant to such finding or conclusion. If an appellee deems a transcript of other parts of the proceedings to be necessary, the appellee, within 14 days after the service of the written documentation of the appellant, shall arrange for the transcription of any additional parts of the proceedings or such parts of the proceedings not already on file, in accordance with these rules. The appellee shall file with the clerk of the trial tribunal, and serve on all other parties of record, written documentation of the additional parts of the proceedings to be transcribed; and the name and address of the court reporter or other neutral person designated to prepare the transcript.

In civil cases and special proceedings where there is an order establishing the indigency of a party entitled to appointed appellate counsel, the ordering of the transcript shall be as in criminal cases where there is an order establishing the indigency of the defendant as set forth in Rule 7(a)(2).

(2) *Criminal cases.* In criminal cases where there is no order establishing the indigency of the defendant for the appeal, the defendant shall arrange for the transcription of the proceedings as in civil cases.

Where there is an order establishing the indigency of the defendant, unless the trial judge's appeal entries specify or the parties stipulate that parts of the proceedings need not be transcribed, the clerk of the trial tribunal shall order a transcript of the proceedings by serving the following documents upon either the court reporter(s) or neutral person designated to prepare the transcript: a copy of the appeal entries signed by the judge; a copy of the trial court's order establishing indigency for the appeal; and a statement setting out the number of copies of the transcript required and the name, address and telephone number of appellant's counsel. The clerk shall make an entry of record reflecting the date these documents were served upon the court reporter(s) or transcriptionist.

(b) *Production and delivery of transcript.*

(1) In civil cases: from the date the requesting party serves the written documentation of the transcript arrangement on the person designated to prepare the transcript, that person shall have 60 days to prepare and deliver the transcript.

In criminal cases where there is no order establishing the indigency of the defendant for the appeal: from the date the requesting party serves the written documentation of the transcript arrangement upon the person designated to prepare the transcript, that person shall have 60 days to produce and deliver the transcript in non-capital cases and 120 days to produce and deliver the transcript in capitally tried cases.

In criminal cases where there is an order establishing the indigency of the defendant for the appeal: from the date listed on the Appellate Entries as the "Date order delivered to transcriptionist," that person shall have 65 days to produce and deliver the transcript in non-capital cases and 125 days to produce and deliver the transcript in capitally tried cases.

The transcript format shall comply with Appendix B of these Rules.

Except in capitally tried criminal cases which result in the imposition of a sentence of death, (t)he trial tribunal, in its discretion, and for good cause shown by the appellant may extend the time to produce the transcript for an additional 30 days. Any subsequent motions for additional time required to produce the transcript may only be made to the appellate court to which appeal

has been taken. All motions for extension of time to produce the transcript in capitally tried cases resulting in the imposition of a sentence of death, shall be made directly to the Supreme Court by the appellant.

(2) The court reporter, or person designated to prepare the transcript, shall deliver the completed transcript, with accompanying ASCII disk or its functional equivalent, to the parties, as ordered, within the time provided by this rule, unless an extension of time has been granted under Rule 7(b)(1) or Rule 27(c). The court reporter or transcriptionist shall certify to the clerk of the trial tribunal that the parties' copies have been so delivered, and shall send a copy of such certification to the appellate court to which the appeal is taken. The appealing party shall retain custody of the original transcript and shall transmit the original transcript to the appellate court upon settlement of the record on appeal.

(3) The neutral person designated to prepare the transcript shall not be a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or be financially interested in the action unless the parties agree otherwise by stipulation. (Adopted June 13, 1975; Repealed July 1, 1978 (See note following Rule 17); Re-adopted December 8, 1988 — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended June 8, 1989 — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended July 26, 1990 — 7(a)(1), (a)(2), and (b)(1) — effective October 1, 1990; Amended November 21, 1997 — effective February 1, 1998; Amended April 14, 1999 — 7(b)(1), para. 5; Amended October 18, 2001 — 7(b)(1), para. 4 — effective October 31, 2001; Amended August 15, 2002 — 7(a)(1), para. 2; January 25, 2007 — 7(b)(1), paras. 3, 5; 7(b)(2) — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

Rule 9. The record on appeal.

(a) *Function; Composition of record.* In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal, the verbatim transcript of proceedings, if one is designated, constituted in accordance with this Rule 9, and any items filed with the record on appeal pursuant to Rule 9(c) and 9(d). Parties may cite any of these items in their briefs and arguments before the appellate courts.

(1) *Composition of the record in civil actions and special proceedings.* The record on appeal in civil actions and special proceedings shall contain:

a. an index of the contents of the record, which shall appear as the first page thereof;

b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;

c. a copy of the summons with return, or of other papers showing jurisdiction of the trial court over person or property, or a statement showing same;

d. copies of the pleadings, and of any pre-trial order on which the case or any part thereof was tried;

e. so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;

f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;

g. copies of the issues submitted and the verdict, or of the trial court's findings of fact and conclusions of law;

h. a copy of the judgment, order, or other determination from which appeal is taken;

i. a copy of the notice of appeal, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3);

j. copies of all other papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);

k. assignments of error set out in the manner provided in Rule 10; and

l. a statement, where appropriate, that the record of proceedings was made with an electronic recording device;

m. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal.

(2) *Composition of the record in appeals from superior court review of administrative boards and agencies.* The record on appeal in cases of appeal from judgments of the superior court rendered upon review of the proceedings of administrative boards or agencies, other than those specified in Rule 18(a), shall contain:

a. an index of the contents of the record, which shall appear as the first page thereof;

b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;

c. a copy of the summons, notice of hearing or other papers showing jurisdiction of the board or agency over the persons or property sought to be bound in the proceeding, or a statement showing same;

d. copies of all petitions and other pleadings filed in the superior court;

e. copies of all items properly before the superior court as are necessary for an understanding of all errors assigned;

f. a copy of any findings of fact and conclusions of law and of the judgment, order, or other determination of the superior court from which appeal is taken;

g. a copy of the notice of appeal from the superior court, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2) and (3); and

h. assignments of error to the actions of the superior court, set out in the manner provided in Rule 10.

(3) *Composition of the record in criminal actions.* The record on appeal in criminal actions shall contain:

a. an index of the contents of the record, which shall appear as the first page thereof;

b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;

c. copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court;

d. copies of docket entries or a statement showing all arraignments and pleas;

e. so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement that the entire verbatim transcript of the proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;

f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;

g. copies of the verdict and of the judgment, order, or other determination from which appeal is taken; and in capitally tried cases, a copy of the jury verdict sheet for sentencing, showing the aggravating and mitigating circumstances submitted and found or not found;

h. a copy of the notice of appeal or an appropriate entry or statement showing appeal taken orally; of all orders establishing time limits relative to the perfecting of the appeal; of any order finding defendant indigent for the purposes of the appeal and assigning counsel; and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is to be filed pursuant to Rule 9(c)(2);

i. copies of all other papers filed and statements of all other proceedings had in the trial courts which are necessary for an understanding of all errors assigned, unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);

j. assignments of error set out in the manner provided in Rule 10;

k. a statement, where appropriate, that the record of proceedings was made with an electronic recording device; and

l. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal.

(4) *Exclusion of Social Security Numbers from Record on Appeal.* Social security numbers shall be deleted or redacted from any document before including the document in the record on appeal.

(b) *Form of record; Amendments.* The record on appeal shall be in the format prescribed by Rule 26(g) and the appendixes to these rules.

(1) *Order of arrangement.* The items constituting the record on appeal should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal.

(2) *Inclusion of unnecessary matter; Penalty.* It shall be the duty of counsel for all parties to an appeal to avoid including in the record on appeal matter not necessary for an understanding of the errors assigned, such as social security numbers referred to in Rule 9(a)(4). The cost of including such matter may be charged as costs to the party or counsel who caused or permitted its inclusion.

(3) *Filing dates and signatures on papers.* Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed and, if verified, the date of verification and the person who verified. Every judgment, order, or other determination shall show the date on which it was entered. The typed or printed name of the person signing a paper shall be entered immediately below the signature.

(4) *Pagination; Counsel identified.* The pages of the printed record on appeal shall be numbered consecutively, be referred to as "record pages" and be cited as "(R p____)." Pages of the Rule 11(c) or Rule 18(d)(3) supplement to the record on appeal shall benumbered consecutively with the pages of the record on appeal, the first page of the supplement to bear the next consecutive number following the number of the last page of the printed record on appeal. These pages shall be referred to as "record supplement pages," and shall be cited as "(S p____)." Pages of the verbatim transcript of proceedings filed under Rule 9(c)(2) shall be referred to as "transcript pages" and cited as "(T p____)." At the end of the record on appeal shall appear the names, office addresses, and telephone numbers of counsel of record for all parties to the appeal.

(5) *Additions and amendments to record on appeal.* On motion of any party or on its own initiative, the appellate court may order additional portions of a trial court record or transcript sent up and added to the record on appeal. On motion of any party the appellate court may order any portion of the record on appeal or transcript amended to correct error shown as to form or content. Prior to the filing of the record on appeal in the appellate court, such motions may be made by any party to the trial tribunal.

(6) *Appeals from Termination of Parental Rights and Juvenile Matters.* The record on appeal shall comply with the provisions to protect the confidentiality of juveniles by redacting the juvenile's name and other identifying information as set out in Rule 3(b) from any documents included in the record on appeal.

(c) *Presentation of testimonial evidence and other proceedings.* Testimonial evidence, voir dire, and other trial proceedings necessary to be presented for review by the appellate court may be included either in the record on appeal in the form specified in Rule 9(c)(1) or by designating the verbatim transcript of proceedings of the trial tribunal as provided in Rule 9(c)(2) and (c)(3). Where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given shall be included in the record on appeal. Verbatim transcripts in an appeal of a termination of parental rights or a juvenile matter, as identified by Rule 3(b), shall be submitted to the appellate court in a signed, sealed envelope or other appropriate container on which is noted a case caption that complies with the confidentiality provisions of Rule 3(b), including the District Court case number. The transcript shall be available to the public only with permission from the appellate court.

(1) *When testimonial evidence narrated — How set out in record.* Where error is assigned with respect to the admission or exclusion of evidence, the question and answer form shall be utilized in setting out the pertinent questions and answers. Other testimonial evidence required to be included in the record on appeal by Rule 9(a) shall be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received, in which case it may be set out in question and answer form. Counsel are expected to seek that form or combination of forms best calculated under the circumstances to present the true sense of the required testimonial evidence concisely and at a minimum of expense to the litigants. To this end, counsel may object to particular narration that it does not accurately reflect the true sense of testimony received; or to particular question and answer portions that the testimony might with no substantial loss in accuracy be summarized in narrative form at substantially less expense. When a judge or referee is required to settle the record on appeal under Rule 11(c) and there is dispute as to the form, he shall settle the form in the course of his general settlement of the record on appeal.

(2) *Designation that verbatim transcript of proceedings in trial tribunal will be used.* Appellant may designate in the record on appeal that the testimonial evidence will be presented in the verbatim transcript of the evidence in the trial tribunal in lieu of narrating the evidence as permitted by Rule 9(c)(1). Appellant may also designate that the verbatim transcript will be used to present voir dire or other trial proceedings where those proceedings are the basis for one or more assignments of error and where a verbatim transcript of those proceedings has been made. Any such designation shall refer to the page numbers of the transcript being designated. Appellant need not designate all of the verbatim transcript which has been made, provided that when the verbatim transcript is designated to show the testimonial evidence, so much of the testimonial evidence must be designated as is necessary for an understanding of all errors assigned. When appellant has narrated the evidence and trial proceedings under Rule 9(c)(1), the appellee may designate the verbatim transcript as a proposed alternative record on appeal.

(3) *Verbatim transcript of proceedings — Settlement, filing, copies, briefs.* Whenever a verbatim transcript is designated to be used pursuant to Rule 9(c)(2):

a. it shall be settled, together with the record on appeal, according to the procedures established by Rule 11;

b. appellant shall cause the settled, verbatim transcript to be filed, contemporaneously with the record on appeal, with the clerk of the appellate court in which the appeal is docketed;

c. in criminal appeals, the district attorney, upon settlement of the record on appeal, shall forward one copy of the settled transcript to the Attorney General of North Carolina; and

d. the briefs of the parties must comport with the requirements of Rule 28 regarding complete statement of the facts of the case and regarding appendixes to the briefs.

(4) *Presentation of discovery materials.* Discovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence. In all instances where discovery materials are considered by the trial tribunal, other than as evidence offered at trial, the following procedures for presenting those materials to the appellate court shall be used: Depositions shall be treated as testimonial evidence and shall be presented by narration or by transcript of the deposition in the manner prescribed by this Rule 9(c). Other discovery materials, including interrogatories and answers, requests for admission, responses to requests, motions to produce, and the like, pertinent to questions raised on appeal, may be set out in the record on appeal or may be sent up as documentary exhibits in accordance with Rule 9(d)(2).

(5) *Electronic Recordings.* When a narrative or transcript has been prepared from an electronic recording, the parties shall not file a copy of the electronic recording with the appellate division except at the direction or with the approval of the appellate court.

(d) *Models, diagrams, and exhibits of material.*

(1) *Exhibits.* Maps, plats, diagrams and other documentary exhibits filed as portions of or attachments to items required to be included in the record on appeal shall be included as part of such items in the record on appeal. Where such exhibits are not necessary to an understanding of the errors assigned, they may by agreement of counsel or by order of the trial court upon motion be excluded from the record on appeal. Social security numbers shall be deleted or redacted from exhibits prior to filing the exhibits in the appellate court.

(2) *Transmitting exhibits.* Three legible copies of each documentary exhibit offered in evidence and required for understanding of errors assigned shall be filed in the appellate court; the original documentary exhibit need not be filed with the appellate court. When an original non-documentary exhibit has been settled as a necessary part of the record on appeal, any party may within 10 days after settlement of the record on appeal in writing request the clerk of superior court to transmit the exhibit directly to the clerk of the appellate court. The clerk shall thereupon promptly identify and transmit the exhibit as directed by the party. Upon receipt of the exhibit, the clerk of the appellate court shall make prompt written acknowledgment thereof to the transmitting clerk and the exhibit shall be included as part of the records in the appellate court. Portions of the record on appeal in either appellate court which are not suitable for reproduction may be designated by the Clerk of the Supreme Court to be exhibits. Counsel may then be required to submit three additional copies of those designated materials.

(3) *Removal of exhibits from appellate court.* All models, diagrams, and exhibits of material placed in the custody of the Clerk of the appellate court must be taken away by the parties within 90 days after the mandate of the Court has issued or the case has otherwise been closed by withdrawal, dismissal, or other order of the Court, unless notified otherwise by the Clerk. When this is not done, the Clerk shall notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the Clerk shall destroy them, or make such other disposition of them as to the Clerk may seem best. (Adopted June 13, 1975; Amended June 10, 1981 — 9(c)(1) — applicable to all appeals docketed on or after October 1, 1981; Amended January 12, 1982 — 9(c)(1) — applicable to all appeals docketed after March 15, 1982; Amended November 27, 1984 — applicable to all appeals in

which the notice of appeal is filed on or after February 1, 1985; Amended December 8, 1988 — 9(a), (c) — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended June 8, 1989 — 9(a) — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended July 26, 1990 — 9(a)(3)h and 9(d)(2) — effective October 1, 1990; Amended March 6, 1997 — 9(b)(5) — effective upon adoption March 6, 1997; Amended November 21, 1997 — 9(a)(1)(j)((1), 9(a)(3)(i)-(k), 9(c)(5) — effective February 1, 1998; Amended October 18, 2001 — 9(d)(2) — effective October 31, 2001; Amended May 6, 2004 — 9(a)-(d) — effective May 12, 2004; January 25, 2007 — added 9(a)(1)(m) & 9(a)(3)(*l*); amended 9(b)(4) — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

CASE NOTES

I. In General.
II. Decisions Under Prior Law.
A. In General.

I. IN GENERAL.

The defendant appellant has the duty to see that the record on appeal is properly made up, etc.

Husband's appeal was subject to dismissal under circumstances in which a one-page letter sent by the husband to the wife's counsel, listing certain pleadings, did not comply with N.C. R. App. P. 9 and N.C. R. App. P. 11, and was not in fact his proposed record on appeal; the record on appeal filed with the appellate court was never in fact served on the wife as a proposed record on appeal. Day v. Day, — N.C. App. —, 637 S.E.2d 906, 2006 N.C. App. LEXIS 2496 (2006).

Failure to Object to Summary Judgment Motion. — When, in a personal injury case, no evidence in the record showed any response by alleged injured parties to their opponents' summary judgment motions other than an objection and motion to strike consideration of certain affidavits, review was solely upon the record on appeal and the verbatim transcript of proceedings, so summary judgment was affirmed. Walden v. Morgan, — N.C. App. —, 635 S.E.2d 616, 2006 N.C. App. LEXIS 2169 (2006).

Failure to show specific prejudice arising from a missing verbatim transcript. — Where the record lacked any indication of the content of the proceeding as it pertained to defendant's waiver of counsel, and defendant failed to show specific prejudice arising from the missing verbatim transcript, defendant's argument that he was prejudiced by the court reporter misplacing the notes and transcript of the probation revocation hearing was without merit. State v. Quick, — N.C. App. —, 634 S.E.2d 915, 2006 N.C. App. LEXIS 2026 (2006).

Omission of Exhibits. —

In a juvenile dependency matter, the appellate court struck an affidavit from a Department of Social Services (DSS) social worker as an exhibit, which was cited in DSS' brief, because the affidavit was not included in the settled record and, therefore, it was inappropriate for DSS to provide and then rely on that document. In re L.B., — N.C. App. —, 639 S.E.2d 23, 2007 N.C. App. LEXIS 84 (2007).

Omission of Necessary Part of Record. —

Property owner's record on appeal did not include several of the exhibits he asserted were erroneously admitted, which constituted a violation of N.C.R.A.P., Rule 9 because they were needed for an understanding of the errors assigned by him; therefore, when viewed in tandem with the owner's other failures to comply with the North Carolina Rules of Appellate Procedure, the nature and significance of the owner's rules violations warranted dismissal of his appeal. Pers. Earth Movers, Inc. v. Thomas, — N.C. App. —, 641 S.E.2d 751, 2007 N.C. App. LEXIS 577 (2007).

Although on appeal defendant challenged the trial court's denial of his motion to suppress, the appellate court declined to address the issue due to the numerous violations of its appellate rules and dismissed the assignment of error; specifically, the record on appeal did not include the complete order denying defendant's motion to suppress in violation of N.C. R. App. P. 9(a)(3)(g). State v. McDougald, — N.C. App. —, 638 S.E.2d 546, 2007 N.C. App. LEXIS 90 (2007).

Because defendant failed to provide the appellate court a copy of an audiotape played to the jury by the state or the accompanying transcript as required under N.C. R. App. P. 9(d)(2), the record was insufficient for the court to determine whether the evidence was prejudicial, as defendant contended. State v. McDougald, — N.C. App. —, 638 S.E.2d 546, 2007 N.C. App. LEXIS 90 (2007).

Applied in State v. Cagle, — N.C. App. —, 641 S.E.2d 705, 2007 N.C. App. LEXIS 476 (2007).

II. DECISIONS UNDER PRIOR LAW.

A. In General.

When Party May Amend Pleadings. —

Defendants, property owners and a water company, as part of their effort to support a trial court's grant of summary judgment in their favor in a suit they claimed an easement over the property of plaintiff property owner, appended to their brief a letter from plaintiff dated after the order on appeal; pursuant to N.C. R. App. P. 9(a), as the court was reviewing the correctness of the decision below, it could consider only those materials submitted to the trial judge. Woodring v. Swieter, — N.C. App. —, 637 S.E.2d 269, 2006 N.C. App. LEXIS 2387 (2006).

Rule 10. Assigning error on appeal.

Legal Periodicals. —

For recent development, "The Supreme Court of North Carolina's Rulemaking Authority and the Struggle for Power: State v. Tutt," see 84 N.C. L. Rev. 2100 (2006).

For recent development, "The Supreme Court of North Carolina's Rulemaking Authority and the Struggle for Power: State v. Tutt," see 84 N.C. L. Rev. 2100 (2006).

CASE NOTES

I. In General.
II. Limiting Scope of Review.
A. Generally.
III. Preserving Questions for Appeal.
A. Generally.
IV. Assignments of Error.
A. Form; Record References.
D. Plain Error.
V. Cross-Assignments by Appellee.

I. IN GENERAL.

Applied in City of Charlotte v. Hurlahe, — N.C. App. —, 631 S.E.2d 28, 2006 N.C. App. LEXIS 1296 (2006); State v. Taylor, — N.C. App. —, 632 S.E.2d 218, 2006 N.C. App. LEXIS 1575 (2006); McKyer v. McKyer, — N.C. App. —, 632 S.E.2d 828, 2006 N.C. App. LEXIS 1829 (2006); In re L.A.B., — N.C. App. —, 631 S.E.2d 61, 2006 N.C. App. LEXIS 1409 (2006); State v. Mewborn, — N.C. App. —, 631 S.E.2d 224, 2006 N.C. App. LEXIS 1411 (2006); In re R.R., — N.C. App. —, 638 S.E.2d 502, 2006 N.C. App. LEXIS 2506 (2006); State v. Theer, — N.C. App. —, 639 S.E.2d 655, 2007 N.C. App. LEXIS 151 (2007); In re W.L.M., — N.C. App. —, 640 S.E.2d 439, 2007 N.C. App. LEXIS 250 (2007); In re L.C., — N.C. App. —, 638 S.E.2d 638, 2007 N.C. App. LEXIS 83 (2007); Watts v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 641 S.E.2d 811, 2007 N.C. App. LEXIS 595 (2007).

Cited in State v. Brown, — N.C. App. —, 631 S.E.2d 49, 2006 N.C. App. LEXIS 1311 (2006); State v. Grant, — N.C. App. —, 632 S.E.2d 258, 2006 N.C. App. LEXIS 1637 (2006); State v. Hill, — N.C. App. —, 632 S.E.2d 777, 2006 N.C. App. LEXIS 1636 (2006); State v. Hill, — N.C. App. —, 632 S.E.2d 777, 2006 N.C. App. LEXIS 1636 (2006); In re Will of McFayden, — N.C. App. —, 635 S.E.2d 65, 2006 N.C. App. LEXIS 2053 (2006); State v. Wallace, — N.C. App. —, 635 S.E.2d 455, 2006 N.C. App. LEXIS 2166 (2006); State v. Smith, — N.C. App. —, 636 S.E.2d 267, 2006 N.C. App. LEXIS 2251 (2006); State v. Faulkner, — N.C. App. —, 638 S.E.2d 18, 2006 N.C. App. LEXIS 2504 (2006); State v. Andujar, — N.C. App. —, 636 S.E.2d 584, 2006 N.C. App. LEXIS 2292 (2006); State v. Chivers, — N.C. App. —, 636 S.E.2d 590, 2006 N.C. App. LEXIS 2330 (2006); State v. Parmaei, — N.C. App. —, 636 S.E.2d 322, 2006 N.C. App. LEXIS 2234 (2006); Bio-Medical Applications of N.C., Inc. v. N.C. HHS, — N.C. App. —, 634 S.E.2d 572, 2006 N.C. App. LEXIS 1979 (2006); Bowser v. Durham Herald Co., — N.C. App. —, 638 S.E.2d 614, 2007 N.C. App. LEXIS 69 (2007).

II. LIMITING SCOPE OF REVIEW.

A. Generally.

Plain Error Review Not Applicable. —

Although defendant challenged the trial court's decision allowing a detective to testify concerning his ongoing investigation of defendant prior to his arrest, contending that the testimony should have been excluded under G.S. 8C-1-403, defendant failed to properly object to the proffered testimony, and therefore appellate review was for plain error only under N.C. R. App. P. 10(b)(1) and (c)(4); but because defendant did not specifically and distinctly

allege plain error, he was not entitled to plain error review of the issue. State v. McDougald, — N.C. App. —, 638 S.E.2d 546, 2007 N.C. App. LEXIS 90 (2007).

III. PRESERVING QUESTIONS FOR APPEAL.

A. Generally.

N.C. R. App. P. 10(b)(1) requires an objection at trial for preservation of an issue on appeal; etc.

When defendant was convicted of perjury and false statements for executing an affidavit of indigency stating that he had no interest in real property when his girlfriend had placed his name on a deed of trust on property she owned, an appellate court reviewed the merits of his conviction, even though he had not moved to dismiss at the close of all the evidence and had thus not preserved the issue for appeal, under N.C. R. App. P. 10(b)(3), because under N.C. R. App. P. 2 it determined it would "prevent manifest injustice" to defendant to review his convictions. State v. Denny, — N.C. App. —, 635 S.E.2d 438, 2006 N.C. App. LEXIS 2158 (2006).

Failure to Obtain a Ruling from the Trial Court —

When, in a personal injury case, alleged injured parties objected to certain affidavits filed with their opponents' summary judgment motion, but did not obtain a ruling on their objection, under N.C. R. App. P. 10(b)(1), the issue was not preserved for appeal, so the issue was not properly before the appellate court. Walden v. Morgan, — N.C. App. —, 635 S.E.2d 616, 2006 N.C. App. LEXIS 2169 (2006).

Grounds Apparent from Context. — Substance of the testimony was apparent from the context within which the questions were asked under G.S. 8C-1-103(a)(2), the grounds for admitting the testimony as evidence of the victim's violent character pertinent to defendant's assertion of self-defense under G.S. 8C-1-404(a)(2) were apparent from the context under N.C. R. App. P. 10(b)(1), and the issue of the testimony's admissibility was properly preserved for appellate review. State v. Everett, — N.C. App. —, 630 S.E.2d 703, 2006 N.C. App. LEXIS 1302 (2006).

Failure to Assign Error. —

Because a party did not assign as error ineffective assistance of counsel, the party's argument that her counsel was ineffective for failing to object to testimony as being hearsay at trial was not properly before the court under N.C. R. App. P. 10(c)(1). In re T.S., — N.C. App. —, 631 S.E.2d 19, 2006 N.C. App. LEXIS 1299 (2006).

When plaintiff in a quiet title suit failed to assign as error that a failure to register a certificate of merger constituted a cloud on title, plaintiff's argument was not properly before the appellate court. Spruce Pine Indus. Park, Inc. v. Explosives Supply Co., — N.C. App. —, 634 S.E.2d 264, 2006 N.C. App. LEXIS 1974 (2006).

Although defendant, in his brief, argued that the issue relating to a defective indictment fell within the rubric of an assignment of error, the appellate court found no mention of the indictment there; the issue was not preserved for appellate review. State v. Brown, — N.C. App. —, 641 S.E.2d 748, 2007 N.C. App. LEXIS 591 (2007).

Failure to Object to Testimony. —

Worker's compensation claimant's argument that a doctor had an ex parte communication with an employer that rendered his testimony incompetent was not preserved for appellate review as the claimant did not object on Salaam v. N.C. Dep't of Transp., 468 S.E.2d 536 (1996), disc. review improvidently allowed, 480 S.E.2d 51 (1997), grounds before the North Carolina Industrial Commission. Perkins v. U.S. Airways, — N.C. App. —, 628 S.E.2d 402, 2006 N.C. App. LEXIS 867 (2006).

Discretion of Appellate Court. —

Although the appellants' brief did not conform completely to the mandates of the North Carolina Rules of Appellate Procedure, thereby subjecting their appeal to dismissal, the appellate court nevertheless elected to reach the merits of their appeal; the court found that it was proper not to dismiss the appeal because, inter alia, the court did not believe that the appellees were substantially prejudiced as the appellants' assignments of error were specific enough to put the appellees on notice of the contested issues and upon what basis the court might rule, and maintaining the integrity of the laws through proper interpretation and application outweighed the importance of dismissal in a case in which the rules violations had little to no impact. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Failure To Object to Aggravated Sentence. —

Defendant's claim of a Blakely v. Washington, 542 U.S. 296 (2004), error in sentencing was considered, even though defendant did not object at trial, as an error at sentencing was not considered an error at trial for the purpose of N.C. R. App. P. 10(b)(1) because the rule was directed to matters that occurred at trial and upon which the trial court had to be given an opportunity to rule in order to preserve the question for appeal. State v. McQueen, — N.C. App. —, 639 S.E.2d 131, 2007 N.C. App. LEXIS 154 (2007).

Issue Not Preserved. —

When at trial, defendant moved to suppress his confession on due process grounds, and only on appeal asserted that his confession should have been suppressed on Miranda grounds, he

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had not preserved the Miranda question for appellate review. State v. Smith, — N.C. App. —, 631 S.E.2d 34, 2006 N.C. App. LEXIS 1290 (2006).

Defendant's general objection to the recalling of an expert on the second day of trial did not preserve defendant's specific objection to the expert's testimony at that time. State v. Hammett, 361 N.C. 92, 637 S.E.2d 518, 2006 N.C. LEXIS 1296 (2006).

Illustrative Cases. —

Assignment of error that stated that the challenged finding was "contrary to law" without stating any specific reason that the finding is "contrary to law" failed to identify the issues briefed on appeal. Calhoun v. WHA Med. Clinic, PLLC, — N.C. App. —, 632 S.E.2d 563, 2006 N.C. App. LEXIS 1654 (2006).

Town's assignments of errors nine through 12, in a case regarding the disclosure of alleged public records, were insufficient because they failed to state the legal basis upon which the error was assigned, and thus the newspaper's motion to dismiss in that regard had to be granted. Womack Newspapers v. Town of Kitty Hawk, — N.C. App. —, 639 S.E.2d 96, 2007 N.C. App. LEXIS 81 (2007).

Because no objection was made to the introduction of counting tests at either the motion to suppress hearing or at trial, the error alleged by defendant was not properly before the appellate court for consideration. State v. Teate, — N.C. App. —, 638 S.E.2d 29, 2006 N.C. App. LEXIS 2515 (2006).

IV. ASSIGNMENTS OF ERROR.

A. Form; Record References.

Failure to cite pages not so egregious as to warrant dismissal. — Although petitioner failed to cite in the record on appeal the record pages corresponding to each of her assignments of error, the appellate court was able to determine the issues in the case; therefore, as petitioner's violation of the N.C. Rules of Appellate Procedure was not so egregious as to invoke dismissal, the appellate court would review the issues pursuant to N.C. R. App. P. 2. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

Failure to Specify Enumerated Findings of Fact or Conclusions of Law. —

Attorney did not comply with N.C. R. App. P. 10 by specifically challenging the trial court's findings of fact, but instead included a number of broadside assignments of error generally challenging the findings of fact supporting the trial court's imposition of G.S. 1A-1-11, sanctions against him; given the fact that the rules regarding the assignment of error to a trial court's findings of fact had been in effect for 18 years, the appellate court choose not to exercise its discretion to waive compliance with those rules. Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Failure to Raise Argument. — When a teacher challenging the nonrenewal of her contract did not raise a specific argument regarding the trial court's standard of review in her assignment of error, the appellate court would not address the issue. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

Effect of Delay from Incorrect Sentence Calculation. — Because of the potential impact on defendant's sentence from an incorrect prior record level calculation and because of the substantial delay defendant had endured in having his appeal heard, the appellate court choose to invoke N.C. R. App. P. 2 notwithstanding defendant's failure to properly set forth his assignment of error. State v. Mullinax, — N.C. App. —, 637 S.E.2d 294, 2006 N.C. App. LEXIS 2384 (2006).

Record References. — Court declined to dismiss petitioner's appeal when his brief contained appropriate record references for each of his arguments and those record references referred to the order appealed from. Bobbitt v. N.C. State Univ., — N.C. App. —, 635 S.E.2d 463, 2006 N.C. App. LEXIS 2164 (2006).

Exceptions Deemed Abandoned by Failure to State Grounds. —

Wife's appeal was subject to dismissal under circumstances in which, in violation of N.C. R. App. P. 10(c), she failed to specify the legal basis upon which her assignments of error were assigned; the wife asserted that the trial court erred in its findings of fact, but did not state on what legal ground the trial court erred. Bennett v. Bennett, — N.C. App. —, 638 S.E.2d 243, 2006 N.C. App. LEXIS 2508 (2006).

Putative wife's cross-appeal was dismissed because she failed to set forth any assignments of error in the record on appeal. Hurston v. Hurston, — N.C. App. —, 635 S.E.2d 451, 2006 N.C. App. LEXIS 2130 (2006).

Assignment of Error Held Sufficient. —

Husband's appeal was dismissed, in part, because the assignment of error in his appellate brief violated N.C. R. App. P. 10(c) in that, although the assignment of error stated the basis on which the trial court dismissed the complaint — for a lack of jurisdiction — the husband failed to state the specific legal basis for the alleged error; further, by making a blanket statement in his brief that the trial court erred in dismissing his complaint on jurisdictional grounds was fatally overbroad, vague, and unspecific. Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Homeowner violated N.C. R. App. P. 10(c)(1) and her appeal was dismissed as she failed to state any legal basis for her assignments of

error as to a directed verdict, a judgment notwithstanding the verdict, a motion to dismiss, a request for findings of fact and conclusions of law, a conversion claim, and the failure to award judgment interest. Jones v. Harrelson & Smith Contrs., LLC, — N.C. App. —, 638 S.E.2d 222, 2006 N.C. App. LEXIS 2521 (2006).

When defendant's assignments of error did not identify the issue briefed on appeal, but were broad, vague, and unspecific, the arguments were beyond the scope of appellate review. State v. Hart, — N.C. App. —, 633 S.E.2d 102, 2006 N.C. App. LEXIS 1675 (2006).

Many of the assignments of error in a property owner's appellate brief failed to comply with N.C.R.A.P., Rule 10(c)(1) because he did not construct arguments for the appellate court to properly evaluate; therefore, when viewed in tandem with the owner's other failures to comply with the North Carolina Rules of Appellate Procedure, the nature and significance of the owner's rules violations warranted dismissal of his appeal. Pers. Earth Movers, Inc. v. Thomas, — N.C. App. —, 641 S.E.2d 751, 2007 N.C. App. LEXIS 577 (2007).

Where Assignment of Error Did Not Reference Record. Neighbor's only assignment of error in record on appeal lacked references to the record or transcript as required by N.C. R. App. P. 10(c)(1); further, the neighbor's brief contained no reference to the lone assignment of error nor the numbers and pages by which it appeared in the record, in violation of N.C. R. App. P. 28(b)(6), and the appeal was dismissed. Walsh v. Town of Wrightsville Beach Bd. of Alderman, — N.C. App. —, 632 S.E.2d 271, 2006 N.C. App. LEXIS 1685 (2006).

Homeowner violated N.C. R. App. P. 10(c)(1) and her appeal was dismissed as she failed to support her assignments of error regarding the exclusion of evidence with any record page reference to the order she purported to appeal; the appeal was therefore abandoned pursuant to N.C. R. App. P. 28(b)(6). Jones v. Harrelson & Smith Contrs., LLC, — N.C. App. —, 638 S.E.2d 222, 2006 N.C. App. LEXIS 2521 (2006).

Citation of Authorities in Assignments of Error Precluded. — Even though a wife claimed that the husband abandoned the majority of his arguments by failing to cite to supporting authority in his assignments of error to the appellate court, the husband had indeed complied with N.C. R. App. P. 28(b)(6) by presenting arguments to the appellate court which contained citations of the authorities upon which he relied; moreover, contrary to the wife's assertions, an appellant was specifically precluded by N.C. R. App. P. 10(c)(1) from including argument in his assignments of error. Morris v. Gray, — N.C. App. —, 640 S.E.2d 737, 2007 N.C. App. LEXIS 258 (2007).

D. Plain Error.

Waiver of Plain Error Argument. — Defendant's claim that he was deprived of his constitutional rights under the confrontation clause by the admission of out-of-court statements was waived under N.C. R. App. P. 10(b)(1) because defendant lodged only a general objection but did not object on constitutional grounds but did not assert on appeal plain error, as permitted under Rule 10(c); thus, plain error review was waived, and defendant's constitutional argument was not properly before the court on appeal. State v. Johnson, — N.C. App. —, 639 S.E.2d 78, 2007 N.C. App. LEXIS 17 (2007).

Plain Error Not Shown. — Trial court did not commit plain error under N.C. R. App. P. 10(c)(4) when the indictment charged that defendant confined, restrained and removed the victim and the jury was instructed that to convict of kidnapping based on a finding that defendant restrained or removed the victim because the indictment alleging all three theories was sufficient and put defendant on notice that the state intended to show that defendant committed kidnapping in any one of the three theories; the jury instruction correctly allowed any one of the three theories to serve as the basis for a finding of kidnapping. State v. Key, — N.C. App. —, 636 S.E.2d 816, 2006 N.C. App. LEXIS 2291 (2006).

It was not plain error to fail to give any instruction to the jury on how to consider an aggravating factor in defendant's trial for second-degree murder and assault with a deadly weapon inflicting serious injury as the evidence against defendant was overwhelming, and even if the instruction was erroneous, it could not be concluded that without it the jury would have reached a different verdict. State v. Borges, — N.C. App. —, — S.E.2d —, 2007 N.C. App. LEXIS 497 (Mar. 6, 2007).

Officer's reference to defendant's invocation of his right to remain silent was not plain error since the officer's testimony regarding defendant's exercise of defendant's right to silence was incidental to the officer's testimony in its entirety; it was doubtful that the jury assigned heavy weight to defendant's exercise of his right to silence in light of the evidence against defendant. State v. Watkins, — N.C. App. —, 640 S.E.2d 409, 2007 N.C. App. LEXIS 360 (2007).

Trial court did not commit plain error by admitting under G.S. 8C-1-602 a victim's testimony that defendant shot the victim even though the victim did not see defendant shoot the victim, since the victim's testimony was based on what the victim perceived as the shooting occurred, and the victim's brother testified that he also heard defendant's voice shortly after the shooting and that he had

known defendant "since the day he was born"; the brother had sufficient personal knowledge to identify defendant and his opinion was rationally based on his perception of the shooting under G.S. 8C-1-701. State v. Watkins, — N.C. App. —, 640 S.E.2d 409, 2007 N.C. App. LEXIS 360 (2007).

Admission of a detective's testimony about information given to another detective by a confidential informant did not violate defendant's Sixth Amendment rights because the statement was not testimonial, but was offered to explain the presence at a restaurant of the officers; a second detective's testimony was also not plain error as it was offered to explain that detective's presence outside of defendant's apartment, rather than for the truth of the matter asserted and the testimony did not violate N.C. R. Evid. 802 because the statements were admissible to explain the presence of the detectives, rather than to prove that defendant sought to sell cocaine. State v. Leyva, — N.C. App. —, 640 S.E.2d 394, 2007 N.C. App. LEXIS 362 (2007).

Prosecutor's elicitation of testimony from the victim regarding the fact that the victim's daughter had recently passed away and that the victim was very close to her young, motherless grandchildren did not amount to plain error because, given the evidence presented, there was not a reasonable probability that the jury would have reached a different verdict had the disputed testimony been excluded. State v. Patterson, — N.C. App. —, 641 S.E.2d 376, 2007 N.C. App. LEXIS 485 (2007).

Admission of the testimony of two officers was not plain error in which the officers testified that defendant's girlfriend told them that: (1) defendant came home to get a long gun with a scope, telling her that he was going hunting; (2) defendant was drunk, irate, bleeding from the face, and that he fell out the door; and (3) defendant and the victim did not get along and that defendant was becoming more uncontrollable; the absence of the girlfriend's statements would not have changed the jury's verdict. State v. Watkins, — N.C. App. —, 640 S.E.2d 409, 2007 N.C. App. LEXIS 360 (2007).

V. CROSS-ASSIGNMENTS BY APPELLEE.

Cross-Assignment Not Properly Preserved for Review. — Farm's cross-assignment of error as to the North Carolina Industrial Commission's conclusion that plaintiff was entitled to temporary total disability benefits was not properly preserved for appellate review pursuant to N.C. R. App. P. 10, because the farm was seeking affirmative relief rather than arguing an alternative basis in law for supporting the judgment. Outerbridge v. Perdue Farms, Inc., — N.C. App. —, 638 S.E.2d 564, 2007 N.C. App. LEXIS 40 (2007).

Issues for Cross-Appeal Not Proper Cross-Assignments. —

Former wife's cross-assignments of error related to an equitable distribution order were not considered because under N.C. R. App. P. 10(d), the claims did not constitute an alternative basis for supporting the judgment and instead attempted to show how the trial court erred in its findings; thus, the wife should have filed a cross-appeal and complied with appropriate appellate rules. Joyce v. Joyce, — N.C. App. —, 637 S.E.2d 908, 2006 N.C. App. LEXIS 2502 (2006).

Rule 11. Settling the record on appeal.

(a) *By agreement.* Within 35 days after the reporter's or transcriptionist's certification of delivery of the transcript, if such was ordered (70 days in capitally tried cases), or 35 days after filing of the notice of appeal if no transcript was ordered, the parties may by agreement entered in the record on appeal settle a proposed record on appeal prepared by any party in accordance with Rule 9 as the record on appeal.

(b) *By appellee's approval of appellant's proposed record on appeal.* If the record on appeal is not settled by agreement under Rule 11(a), the appellant shall, within the same times provided, serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 9. Within 30 days (35 days in capitally tried cases) after service of the proposed record on appeal upon an appellee, that appellee may serve upon all other parties a notice of approval of the proposed record on appeal, or objections, amendments, or a proposed alternative record on appeal in accordance with Rule 11(c). If all appellees within the times allowed them either serve notices of approval or fail to serve either notices of approval or objections, amendments, or proposed alternative records on appeal, appellant's proposed record on appeal thereupon constitutes the record on appeal.

(c) *By agreement, by operation of rule, or by court order after appellant's objection or amendment.* Within 30 days (35 days in capitally tried cases) after

service upon appellee of appellant's proposed record on appeal, that appellee may serve upon all other parties specific amendments or objections to the proposed record on appeal, or a proposed alternative record on appeal. Amendments or objections to the proposed record on appeal shall be set out in a separate paper and shall specify any item(s) for which an objection is based on the contention that the item was not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, or that the content of a statement or narration is factually inaccurate. An appellant who objects to an appellee's response to the proposed record on appeal shall make the same specification in his request for judicial settlement. The formatting of the proposed record on appeal and the order in which items appear in it is the responsibility of the appellant.

If any appellee timely serves amendments, objections, or a proposed alternative record on appeal, the record on appeal shall consist of each item that is either among those items required by Rule 9(a) to be in the record on appeal or that is requested by any party to the appeal and agreed upon for inclusion by all other parties to the appeal. If a party requests that an item be included in the record on appeal but not all other parties to the appeal agree to its inclusion, then that item shall not be included in the printed record on appeal, but shall be filed by the appellant with the printed record on appeal in three copies of a volume captioned "Rule 11(c) Supplement to the Printed Record on Appeal," along with any verbatim transcripts, narrations of proceedings, documentary exhibits, and other items that are filed pursuant to Rule 9(c) or 9(d); provided that any item not filed, served, submitted for consideration, admitted, or for which no offer of proof was tendered, shall not be included. Subject to the additional requirements of Rule 28(d), items in the Rule 11(c) supplement may be cited and used by the parties as would items in the printed record on appeal.

If a party does not agree to the word ing of a statement or narration required or permitted by these rules,there shall be no judicial settlement to resolve the dispute unless the objection is based on a contention that the statement or narration concerns an item that was not filed, served, submitted for consideration, admitted, or tendered in an offer of proof, or that a statement or narration is factually inaccurate. Instead, the objecting party is permitted to have inserted in the settled record on appeal a concise counter-statement. Parties are strongly encouraged to reach agreement on the wording of statements in records on appeal. Judicial settlement is not appropriate for disputes that concern only the formatting of a record on appeal or the order in which items appear in a record on appeal.

The Rule 11(c) supplement to the printed record on appeal shall contain an index of the contents of the supplement, which shall appear as the first page thereof. The Rule 11(c) supplement shall be paginated as required by Rule 9(b)(4) and the contents should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal. If a party does not agree to the inclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement.

If any party to the appeal contends that materials proposed for inclusion in the record or for filing there with pursuant to Rule 9(c) or 9(d) were not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, or that a statement or narration permitted by these rules is not factually accurate, then that party, within 10 days after expiration of the time within which the appellee last served with the appellant's proposed record on appeal might have served amendments, objections, or a proposed alternative record on appeal, may in writing request that the judge from whose judgment, order, or other determination appeal was taken settle the record on appeal. A

copy of the request, endorsed with a certificate showing service on the judge, shall be filed forthwith in the office of the clerk of the superior court, and served upon all other parties. Each party shall promptly provide to the judge a reference copy of the record items, amendments, or objections served by that party in the case.

The functions of the judge in the settlement of the record on appeal are to determine whether a statement permitted by these rules is not factually accurate, to settle narrations of proceedings under Rule 9(c)(1) and to determine whether the record accurately reflects material filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, but not to decide whether material desired in the record by either party is relevant to the issues on appeal, non-duplicative, or otherwise suited for inclusion in the record on appeal.

The judge shall send written notice to counsel for all parties setting a place and a time for a hearing to settle the record on appeal. The hearing shall be held not later than 15 days after service of the request for hearing upon the judge. The judge shall settle the record on appeal by order entered not more than 20 days after service of the request for hearing upon the judge. If requested, the judge shall return the record items submitted for reference during the judicial settlement process with the order settling the record on appeal.

If any appellee timely serves amendments, objections, or a proposed alternative record on appeal, and no judicial settlement of the record is timely sought, the record is deemed settled as of the expiration of the ten-day period within which any party could have requested judicial settlement of the record on appeal under this Rule 11(c).

Provided, that nothing herein shall prevent settlement of the record on appeal by agreement of the parties at any time within the times herein limited for settling the record by judicial order.

(d) *Multiple appellants; single record on appeal.* When there are multiple appellants (2 or more), whether proceeding separately or jointly, as parties aligned in interest, or as cross-appellants, there shall nevertheless be but one record on appeal, and the appellants shall attempt to agree to the procedure for constituting a proposed record on appeal. The assignments of error of the several appellants shall be set out separately in the single record on appeal and attributed to the several appellants by any clear means of reference. In the event multiple appellants cannot agree to the procedure for constituting a proposed record on appeal, the judge from whose judgment, order, or other determination the appeals are taken shall, on motion of any appellant with notice to all other appellants, enter an order settling the procedure, including the allocation of costs.

(e) *[Reserved.]*

(f) *Extensions of time.* The times provided in this rule for taking any action may be extended in accordance with the provisions of Rule 27(c). (Adopted June 13, 1975; Amended November 27, 1984 — 11(a), (c), (e), and (f) — applicable to appeals in which the notice of appeal is filed on or after February 1, 1985; Amended December 8, 1988 — 11(a), (b), (c), (e), and (f) — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended July 26, 1990 — 11(b), (c), (d) — effective October 1, 1990; Amended March 6, 1997 — 11(c) — effective upon adoption March 6, 1997; Amended November 21, 1997 — 11(a) — effective February 1, 1998; Amended May 6, 2004 — 11(b), 11(c), 11(d) — effective May 12, 2004; January 25, 2007 — 11(c), paras. 1, 2, 5, 6; added paras. 3, 4, 8 — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

CASE NOTES

Failure to Show Specific Prejudice Arising from a Missing Verbatim Transcript. — Where the record lacked any indication of the content of the proceeding as it pertained to defendant's waiver of counsel, and defendant failed to show specific prejudice arising from the missing verbatim transcript, defendant's argument that he was prejudiced by the court reporter misplacing the notes and transcript of the probation revocation hearing was without merit. State v. Quick, — N.C. App. —, 634 S.E.2d 915, 2006 N.C. App. LEXIS 2026 (2006).

Extension of Time Proper. — It was not an abuse of discretion by the trial judge to deem plaintiffs' service of the record timely under N.C. R. App. P. 11 because N.C. R. App. P. 27 allowed the trial judge to grant an extension of time to serve the record on appeal even after the deadline for service had passed. Robbins v. Ingham, — N.C. App. —, 635 S.E.2d 610, 2006 N.C. App. LEXIS 2160 (2006), cert. denied, appeal dismissed, 361 N.C. 221 (2007).

One page letter not record on appeal. — Husband's appeal was subject to dismissal under circumstances in which a one-page letter sent by the husband to the wife's counsel, listing certain pleadings, did not comply with N.C. R. App. P. 9 and N.C. R. App. P. 11, and was not in fact his proposed record on appeal; the record on appeal filed with the appellate court was never in fact served on the wife as a proposed record on appeal. Day v. Day, — N.C. App. —, 637 S.E.2d 906, 2006 N.C. App. LEXIS 2496 (2006).

Rule 12. Filing the record; Docketing the appeal; Copies of the record.

(a) *Time for filing record on appeal.* Within 15 days after the record on appeal has been settled by any of the procedures provided in Rule 11 or Rule 18, the appellant shall file the record on appeal with the clerk of the court to which appeal is taken.

(b) *Docketing the appeal.* At the time of filing the record on appeal, the appellant shall pay to the clerk the docket fee fixed pursuant to G.S. 7A-20(b), and the clerk shall thereupon enter the appeal upon the docket of the appellate court. If an appellant is authorized to appeal in forma pauperis as provided in G.S. 1-288 or 7A-450 et seq., the clerk shall docket the appeal upon timely filing of the record on appeal. An appeal is docketed under the title given to the action in the trial division, with the appellant identified as such. The clerk shall forthwith give notice to all parties of the date on which the appeal was docketed in the appellate court.

(c) *Copies of record on appeal.* The appellant shall file one copy of the record on appeal, one copy of a transcript designated pursuant to Rule 9(c)(2), three copies of each exhibit designated pursuant to Rule 9(d), and three copies of any supplement to the record on appeal submitted pursuant to Rule 11(c) or Rule 18(d)(3). Upon filing, the appellant may be required to pay to the clerk of the appellate court a deposit fixed by the clerk to cover the costs of reproducing copies of the record on appeal. The clerk will reproduce and distribute copies as directed by the court. (Adopted June 13, 1975; Amended November 27, 1984 — applicable to appeals in which the notice of appeal is filed on or after February 1, 1985; Amended December 8, 1988 — 12(a) and (c) — effective for all judgments of the trial tribunal entered on or after July 1, 1989; Amended March 6, 1997 — 12(c) — effective upon adoption March 6, 1997; Amended May 1, 2003 — 12(c); January 25, 2007 — 12(a), (c) — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

Rule 13. Filing and service of briefs.

CASE NOTES

Applied in In re L.B., — N.C. App. —, 639 S.E.2d 23, 2007 N.C. App. LEXIS 84 (2007).

ARTICLE III. REVIEW BY SUPREME COURT OF APPEALS ORIGINALLY DOCKETED IN COURT OF APPEALS: APPEALS OF RIGHT; DISCRETIONARY REVIEW

Rule 14. Appeals of right from Court of Appeals to Supreme Court under G.S. 7A-30.

CASE NOTES

Cited in Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006); Dodd v. Auto. Ins. Co. of Hartford, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 12318 (W.D.N.C. Feb. 21, 2007).

Rule 15. Discretionary review on certification by Supreme Court under G.S. 7A-31.

CASE NOTES

Improvidently Allowed. — Discretionary review, pursuant to G.S. 7A-31, of three protective orders was improvidently allowed; under N.C. R. App. P. 15(b), a husband's petition for review of those orders was not timely filed. Davis v. Davis, 360 N.C. 518, 631 S.E.2d 114, 2006 N.C. LEXIS 593 (2006).

Cited in Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Rule 16. Scope of review of decisions of Court of Appeals.

CASE NOTES

Scope of Review Limited in Appeals of Right Based on Dissent. —

Supreme Court of North Carolina's review of a decision of the Court of Appeals of North Carolina was limited solely to determining whether a trial court violated defendant's Sixth Amendment right to jury trial because the question specifically set out in the dissenting opinion in the Court of Appeals was that defendant's Sixth Amendment right to a jury trial was not violated by the trial court in defendant's sentencing. State v. Norris, 360 N.C. 507, 630 S.E.2d 915, 2006 N.C. LEXIS 592 (2006).

An insurer's reliance on a per curiam decision by the North Carolina Supreme Court to claim that the court erred, inter alia, in disregarding a provision in an insured's policy specifically excluding damage occurring as a result of a landslide, was misplaced because the per curiam decision, which reversed a decision of the North Carolina Court of Appeals for the reasons stated in the dissenting opinion, appeared limited to a review of the sufficiency of a factual basis presented to survive summary judgment, and neither the dissenting opinion nor the appellant's brief to the North Carolina Supreme Court in that case had specifically addressed the validity of the underlying exclusionary language at issue, which was required under N.C. R. App. P. 16(b) to put the issue before the North Carolina Supreme Court for review. Dodd v. Auto. Ins. Co. of Hartford, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 12318 (W.D.N.C. Feb. 21, 2007).

ARTICLE IV. DIRECT APPEALS FROM ADMINISTRATIVE AGENCIES TO APPELLATE DIVISION

Rule 18. Taking appeal; Record on appeal — Composition and settlement.

(a) *General.* Appeals of right from administrative agencies, boards, or commissions (hereinafter "agency") directly to the appellate division under

G.S. 7A-29 shall be in accordance with the procedures provided in these rules for appeals of right from the courts of the trial divisions, except as hereinafter provided in this Article.

(b) *Time and method for taking appeals.*

(1) The times and methods for taking appeals from an agency shall be as provided in this Rule 18 unless the statutes governing the agency provide otherwise, in which case those statutes shall control.

(2) Any party to the proceeding may appeal from a final agency determination to the appropriate court of the appellate division for alleged errors of law by filing and serving a notice of appeal within 30 days after receipt of a copy of the final order of the agency. The final order of the agency is to be sent to the parties by Registered or Certified Mail. The notice of appeal shall specify the party or parties taking the appeal; shall designate the final agency determination from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(3) If a transcript of fact-finding proceedings is not made by the agency as part of the process leading up to the final agency determination, the appealing party may contract with the reporter for production of such parts of the proceedings not already on file as he deems necessary, pursuant to the procedures prescribed in Rule 7.

(c) *Composition of record on appeal.* The record on appeal in appeals from any agency shall contain:

(1) an index of the contents of the record on appeal, which shall appear as the first page thereof;

(2) a statement identifying the commission or agency from whose judgment, order or opinion appeal is taken, the session at which the judgment, order or opinion was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;

(3) a copy of the summons with return, notice of hearing, or other papers showing jurisdiction of the agency over persons or property sought to be bound in the proceeding, or a statement showing same;

(4) copies of all other notices, pleadings, petitions, or other papers required by law or rule of the agency, including a Form 44 for all cases which originate from the Industrial Commission, to be filed with the agency to present and define the matter for determination;

(5) a copy of any findings of fact and conclusions of law and a copy of the order, award, decision, or other determination of the agency from which appeal was taken;

(6) so much of the evidence taken before the agency or before any division, commissioner, deputy commissioner, or hearing officer of the agency, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2) and (3);

(7) where the agency has reviewed a record of proceedings before a division, or an individual commissioner, deputy commissioner, or hearing officer of the agency, copies of all items included in the record filed with the agency which are necessary for an understanding of all errors assigned;

(8) copies of all other papers filed and statements of all other proceedings had before the agency or any of its individual commissioners, deputies, or divisions which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings which is being filed pursuant to Rule 9(c)(2) and (3);

(9) a copy of the notice of appeal from the agency, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or

order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3);

(10) assignments of error to the actions of the agency, set out as provided in Rule 10;

(11) a statement, where appropriate, that the record of proceedings was made with an electronic recording device;

(12) a statement, where appropriate, that a supplement compiled pursuant to Rule 18(d)(3) is filed with the record on appeal.

(d) *Settling the record on appeal.* The record on appeal may be settled by any of the following methods:

(1) *By agreement.* Within 35 days after filing of the notice of appeal or after production of the transcript if one is ordered pursuant to Rule 18(b)(3), the parties may by agreement entered in the record on appeal settle a proposed record on appeal prepared by any party in accordance with this Rule 18 as the record on appeal.

(2) *By appellee's approval of appellant's proposed record on appeal.* If the record on appeal is not settled by agreement under Rule 18(d)(1), the appellant shall, within 35 days after filing of the notice of appeal or after production of the transcript if one is ordered pursuant to Rule 18(b)(3), serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 18(c). Within 30 days after service of the proposed record on appeal upon an appellee, that appellee may serve upon all other parties a notice of approval of the proposed record on appeal, or objections, amendments, or a proposed alternative record on appeal. Amendments or objections to the proposed record on appeal shall be set out in a separate paper and shall specify any item(s) for which an objection is based on the contention that the item was not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, or that the content of a statement or narration is factually inaccurate. An appellant who objects to an appellee's response to the proposed record on appeal shall make the same specification in his request for judicial settlement. The formatting of the proposed record on appeal and the order in which items appear in it is the responsibility of the appellant. Judicial settlement is not appropriate for disputes concerning only the formatting or the order in which items appear in the settled record on appeal. If all appellees within the times allowed them either file notices of approval or fail to file either notices of approval or objections, amendments, or proposed alternative records on appeal, appellant's proposed record on appeal thereupon constitutes the record on appeal.

(3) *By agreement, by operation of rule, or by court order after appellee's objection or amendment.* If any appellee timely files amendments, objections, or a proposed alternative record on appeal, the record on appeal shall consist of each item that is either among those items required by Rule 9(a) to be in the record on appeal or that is requested by any party to the appeal and agreed upon for inclusion by all other parties to the appeal, in the absence of contentions that the item was not filed, served, or offered into evidence. If a party requests that an item be included in the record on appeal but not all parties to the appeal agree to its inclusion, then that item shall not be included in the printed record on appeal; but shall be filed by the appellant with the record on appeal in a volume captioned "Rule 18(d)(3) Supplement to the Printed Record on Appeal" along with any verbatim transcripts, narrations of proceedings, documentary exhibits, and other items that are filed pursuant to Rule 18(b) or 18(c); provided that any item not filed, served, submitted for consideration, admitted, or for which no offer of proof was tendered, shall not be included. Subject to the additional requirements of Rule 28(d), items in the Rule 18(d)(3) supplement may be cited and used by the parties as would items in the printed record on appeal.

If a party does not agree to the wording of a statement or narration required or permitted by these rules, there shall be no judicial settlement to resolve the dispute unless the objection is based on a contention that the statement or narration concerns an item that was not filed, served, submitted for consideration, admitted, or tendered in an offer of proof, or that a statement or narration is factually inaccurate. Instead, the objecting party is permitted to have inserted in the settled record on appeal a concise counter-statement. Parties are strongly encouraged to reach agreement on the wording of statements in records on appeal.

The Rule 18(d)(3) supplement to the printed record on appeal shall contain an index of the contents of the supplement, which shall appear as the first page thereof. The Rule 18(d)(3) supplement shall be paginated consecutively with the pages of the record on appeal, the first page of the supplement to bear the next consecutive number following the number of the last page of the record on appeal. These pages shall be referred to as "record supplement pages," and shall be cited as "(S p____)." The contents of the supplement should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal. If a party does not agree to the inclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement.

If any party to the appeal contends that materials proposed for inclusion in the record or for filing therewith pursuant to Rule 18(b) or 18(c) were not filed, served, submitted for consideration, admitted, or offered into evidence, or that a statement or narration permitted by these rules is not factually accurate, than that party, within 10 days after expiration of the time within which the appellee last served with the appellant's proposed record on appeal might have filed amendments, objections, or a proposed alternative record on appeal, may in writing request that the agency head convene a conference to settle the record on appeal. A copy of that request, endorsed with a certificate showing service on the agency head, shall be served upon all other parties. Each party shall promptly provide to the agency head a reference copy of the record items, amendments, or objections served by that party in the case.

The functions of the agency head in the settlement of the record on appeal are to determine whether a statement permitted by these rules is not factually accurate, to settle narrations of proceedings under Rule 18(c)(6), and to determine whether the record accurately reflects material filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, but not to decide whether material desired in the record by either party is relevant to the issues on appeal, non-duplicative, or otherwise suited for inclusion in the record on appeal.

Upon receipt of a request for settlement of the record on appeal, the agency head shall send written notice to counsel for all parties setting a place and time for a conference to settle the record on appeal. The conference shall be held not later than 15 days after service of the request upon the agency head. The agency head or a delegate appointed in writing by the agency head shall settle the record on appeal by order entered not more than 20 days after service of the request for settlement upon the agency. If requested, the settling official shall return the record items submitted for reference during the settlement process with the order settling the record on appeal.

When the agency head is a party to the appeal, the agency head shall forthwith request the Chief Judge of the Court of Appeals or the Chief Justice of the Supreme Court, as appropriate, to appoint a referee to settle the record on appeal. The referee so appointed shall proceed after conference with all parties to settle the record on appeal in accordance with the terms of these Rules and the appointing order.

If any appellee timely serves amendments, objections, or a proposed alternative record on appeal, and no judicial settlement of the record is sought, the record is deemed settled as of the expiration of the ten day period within which any party could have requested judicial settlement of the record on appeal under this Rule 18(d)(3).

Nothing herein shall prevent settlement of the record on appeal by agreement of the parties at any time within the times herein limited for settling the record by agency order.

(e) *Further procedures.* Further procedures for perfecting and prosecuting the appeal shall be as provided by these Rules for appeals from the courts of the trial divisions.

(f) *Extensions of time.* The times provided in this Rule for taking any action may be extended in accordance with the provisions of Rule 27(c). (Adopted June 13, 1975; Amended June 21, 1977; Amended October 7, 1980 — 18(d)(3) — effective January 1, 1981; Amended February 27, 1985 — applicable to all appeals in which the notice of appeal is filed on or after March 15, 1985; Amended July 26, 1990 — 18(b)(3), (d)(1) and (d)(2) — effective October 1, 1990; Amended March 6, 1997 —18(c)(2), (c)(4) — effective July 1, 1997; Amended November 21, 1997 — 18(c)(11) — effective February 1, 1998; Amended May 6, 2004 — 18(c)(1), (d)(2), (d)(3) — effective May 12, 2004; January 25, 2007 — 18(d)(2); 18(d)(3), paras. 1, 4, 5; added 18(d)(3), paras. 2, 3, 8 — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

CASE NOTES

Cited in Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Rule 23. Supersedeas.

CASE NOTES

Resentencing Jurisdiction Absent Stay. — Trial court had jurisdiction to conduct a resentencing hearing where even though the defendant had petitioned for discretionary review under N.C. R. App. P. 15(a), nothing in the record indicated that he had sought a writ of supersedeas under N.C. R. App. P. 23(b) and absent such a stay, G.S. 15A-1452(c) required the superior court to comply with the appellate court's mandate. State v. Dorton, — N.C. App. —, 641 S.E.2d 357, 2007 N.C. App. LEXIS 472 (2007).

ARTICLE VI. GENERAL PROVISIONS

Rule 25. Penalties for failure to comply with rules.

CASE NOTES

I. In General.

I. IN GENERAL.

Sanctions Imposed on Counsel. — Pursuant to N.C. R. App. P. 25 and N.C. R. App. P. 34, defendant's counsel was ordered to personally pay the costs of defendant's appeal because counsel's statement of facts was neither full, complete, nor non-argumentative, as required by N.C. R. App. P. 28. State v. Cagle, — N.C. App. —, 641 S.E.2d 705, 2007 N.C. App. LEXIS 476 (2007).

Single Violation Not Substantial. — Where dominant tract owners were granted a prescriptive easement, the servient tract owner's counsel was ordered to pay the printing costs of the appeal pursuant to N.C. R. App. P. 34(b) because the servient tract owner did not provide an applicable standard of review or

citation of authorities supporting such a standard in the appellate brief, and the single violation was not substantial. Caldwell v. Branch, — N.C. App. —, 638 S.E.2d 552, 2007 N.C. App. LEXIS 91 (2007).

Rule 26. Filing and service.

CASE NOTES

No Certificate of Service. — When the father in a child support case failed to include in the record a certificate of service of the notice of appeal, this was a violation of N.C. R. App. P. 3 and N.C. R. App. P. 26, and the appeal was dismissed; the mother had not waived the father's failure to include the proof of service, and such a failure was not inconsequential. Ribble v. Ribble, — N.C. App. —, 637 S.E.2d 239, 2006 N.C. App. LEXIS 2293 (2006).

Father's appeal of an order adjudicating his son as neglected and his daughter as abused and neglected was dismissed as the father failed to attach to the notice of appeal a certificate of service acknowledging service of all parties to the action as required by N.C. R. App. P. 3 and N.C. R. App. P. 26; a department of social services and a guardian ad litem did not waive the father's failure to include proof of service of his notice of appeal. In re C.T., — N.C. App. —, 641 S.E.2d 414, 2007 N.C. App. LEXIS 501 (2007).

Double Spacing. —

Appellate brief violated N.C. R. App. P. 26(g) because the line spacing in the body of text shall failed to present double spacing between each line of text; although no more than 27 lines of double-spaced text was to appear on a page, the brief, on the other hand, contained pages with as many as 35 lines of text. Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Sanctions Imposed. — Defendant's counsel was sanctions and was required to personally pay the printing costs of an appeal because he violated N.C. R. App. P. 26(g)(1) by single-spacing the argument section of his brief and because he failed to include a statement of the standard of review as required under N.C. R. App. P. 28(b)(6). State v. Lockhart, — N.C. App. —, 639 S.E.2d 5, 2007 N.C. App. LEXIS 89 (2007).

Applied in State v. Brown, — N.C. App. —, 631 S.E.2d 49, 2006 N.C. App. LEXIS 1311 (2006).

Cited in In re A.B., — N.C. App. —, 635 S.E.2d 11, 2006 N.C. App. LEXIS 2027 (2006).

Rule 27. Computation and extension of time.

CASE NOTES

Order to Extend Time for Serving Record on Appeal Held Proper. —

It was not an abuse of discretion by the trial judge to deem plaintiffs' service of the record timely under N.C. R. App. P. 11 because N.C. R. App. P. 27 allowed the trial judge to grant an extension of time to serve the record on appeal even after the deadline for service had passed. Robbins v. Ingham, — N.C. App. —, 635 S.E.2d 610, 2006 N.C. App. LEXIS 2160 (2006), cert. denied, appeal dismissed, 361 N.C. 221 (2007).

Applied in In re L.B., — N.C. App. —, 639 S.E.2d 23, 2007 N.C. App. LEXIS 84 (2007).

Cited in Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Rule 28. Briefs: Function and content.

(a) *Function.* The function of all briefs required or permitted by these rules is to define clearly the questions presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. Review is limited to questions so presented in the several briefs. Questions raised by assignments of error in appeals from trial tribunals but not then presented and discussed in a party's brief, are deemed abandoned. Similarly, questions properly presented for review in the Court of Appeals but not then stated in the notice of appeal or the petition, accepted by the Supreme Court for review, and discussed in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court for review by that Court are deemed abandoned.

(b) *Content of appellant's brief.* An appellant's brief in any appeal shall contain, under appropriate headings, and in the form prescribed by Rule 26(g) and the Appendixes to these rules, in the following order:

(1) A cover page, followed by a subject index and table of authorities required by Rule 26(g).

(2) A statement of the questions presented for review.

(3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.

(4) *A statement of the grounds for appellate review.* Such statement shall include citation of the statute or statutes permitting appellate review. When an appeal is based on Rule 54(b) of the Rules of Civil Procedure, the statement shall show that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the trial court that there is no just reason for delay. When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.

(5) A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all questions presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

(6) An argument, to contain the contentions of the appellant with respect to each question presented. Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned. However, in new briefs before the Supreme Court, a party need not reference assignments of error to the extent that party was the appellee (or cross-appellee) before the Court of Appeals and is urging the Supreme Court to reverse the Court of Appeals.

The argument shall contain a concise statement of the applicable standard(s) of review for each question presented, which shall appear either at the beginning of the discussion of each question presented or under a separate heading placed before the beginning of the discussion of all the questions presented.

The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the question presented may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal or the transcript of proceedings, or the exhibits.

(7) A short conclusion stating the precise relief sought.

(8) Identification of counsel by signature, typed name, office address and telephone number.

(9) The proof of service required by Rule 26(d).

(10) The appendix required by Rule 28(d).

(c) *Content of appellee's brief; Presentation of additional questions.* An appellee's brief in any appeal shall contain a subject index and table of authorities as required by Rule 26(g), an argument, a conclusion, identification of counsel and proof of service in the form provided in Rule 28(b) for an appellant's brief, and any appendix as may be required by Rule 28(d). It need contain no statement of the questions presented, statement of the procedural history of the case, statement of the grounds for appellate review, statement of the facts, or statement of the standard(s) of review, unless the appellee

disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present questions in addition to those stated by the appellant. An appellee's brief may, but is not required to, include a reference to assignments of error as required by Rule 28(b)(6) for an appellant's brief.

Without having taken appeal, an appellee may present for review, by stating them in his brief, any questions raised by cross-assignments of error under Rule 10(d). Without having taken appeal or made cross-assignments of error, an appellee may present the question, by statement and argument in his brief, whether a new trial should be granted to the appellee rather than a judgment *n.o.v.* awarded to the appellant when the latter relief is sought on appeal by the appellant.

If the appellee is entitled to present questions in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new questions supported by references to pages in the record on appeal, the transcript of proceedings, or the appendixes, as appropriate, as well as a statement of the applicable standard(s) of review for those additional questions.

(d) *Appendixes to briefs.* Whenever the transcript of proceedings is filed pursuant to Rule 9(c)(2), the parties must file verbatim portions of the transcript as appendixes to their briefs, if required by this Rule 28(d). Verbatim portions of the transcript filed pursuant to this rule in an appeal of a termination of parental rights or juvenile matter must be modified to comply with the confidentiality provisions of Rule 3(b).

(1) *When appendixes to appellant's brief are required.* Except as provided in Rule 28(d)(2), the appellant must reproduce as appendixes to its brief:

a. those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any question presented in the brief;

b. those portions of the transcript showing the pertinent questions and answers when a question presented in the brief involves the admission or exclusion of evidence;

c. relevant portions of statutes, rules, or regulations, the study of which is required to determine questions presented in the brief;

d. relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal the study of which are required to determine questions presented in the brief.

(2) *When appendixes to appellant's brief are not required.* Notwithstanding the requirements of Rule 28(d)(1), the appellant is not required to reproduce an appendix to its brief with respect to an assignment of error:

a. whenever the portion of the transcript necessary to understand a question presented in the brief is reproduced verbatim in the body of the brief;

b. to show the absence or insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or

c. to show the general nature of the evidence necessary to understand a question presented in the brief if such evidence has been fully summarized as required by Rule 28(b)(4) and (5).

(3) *When appendixes to appellee's brief are required.* Appellee must reproduce appendixes to his brief in the following circumstances:

a. Whenever the appellee believes that appellant's appendixes do not include portions of the transcript or items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal that are required by Rule 28(d)(1), the appellee shall reproduce those portions of the transcript or supplement he believes to be necessary to understand the question.

b. Whenever the appellee presents a new or additional question in his brief as permitted by Rule 28(c), the appellee shall reproduce portions of the

transcript or relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal as if he were the appellant with respect to each such new or additional question.

(4) *Format of appendixes.* The appendixes to the briefs of any party shall be in the format prescribed by Rule 26(g) and shall consist of clear photocopies of transcript pages which have been deemed necessary for inclusion in the appendix under this Rule 28(d). The pages of the appendix shall be consecutively numbered and an index to the appendix shall be placed at its beginning.

(e) *References in briefs to the record.* References in the briefs to assignments of error shall be by their numbers and to the pages of the printed record on appeal or of the transcript of proceedings, or both, as the case may be, at which they appear. Reference to parts of the printed record on appeal and to the verbatim transcript or documentary exhibits shall be to the pages where the parts appear.

(f) *Joinder of multiple parties in briefs.* Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief although they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.

(g) *Additional authorities.* Additional authorities discovered by a party after filing his brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs nor in such a memorandum may not be cited and discussed in oral argument.

Before the Court of Appeals, the party shall file an original and three copies of the memorandum; in the Supreme Court, the party shall file an original and 14 copies of the memorandum.

(h) *Reply briefs.* No reply brief will be received or considered by the Court, except in the following circumstances:

(1) The Court, upon its own initiative, may order a reply brief to be filed and served.

(2) If the appellee has presented in its brief new or additional questions as permitted by Rule 28(c), an appellant may, within 14 days after service of such brief, file and serve a reply brief limited to those new or additional questions.

(3) If the parties are notified under Rule 30(f) that the case will be submitted without oral argument on the record and briefs, an appellant may, within 14 days after service of such notification, file and serve a reply brief limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief or in a reply brief filed pursuant to Rule 28(h)(2).

(4) If the parties are notified that the case has been scheduled for oral argument, an appellant may, within 14 days after service of such notification, file and serve a motion for leave to file a reply brief. The motion shall state concisely the reasons why a reply brief is believed to be desirable or necessary and the issues to be addressed in the reply brief. The proposed reply brief may be submitted with the motion for leave and shall be limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief. Unless otherwise ordered by the Court, the motion for leave will be determined solely upon the motion and without responses thereto or oral argument. The clerk of the appellate court will notify the parties of the Court's action upon the motion, and, if the motion is granted, the appellant shall file and serve the reply brief within ten days of such notice.

(5) Motions for extensions of time in relation to reply briefs are disfavored.

(i) *Amicus curiae briefs.* A brief of an *amicus curiae* may be filed only by leave of the appellate court wherein the appeal is docketed or in response to a request made by that Court on its own initiative.

A person desiring to file an *amicus curiae* brief shall present to the Court a motion for leave to file, served upon all parties. The motion shall state concisely the nature of the applicant's interest, the reasons why an *amicus curiae* brief is believed desirable, the questions of law to be addressed in the *amicus curiae* brief and the applicant's position on those questions. The proposed *amicus curiae* brief may be conditionally filed with the motion for leave. Unless otherwise ordered by the Court, the application for leave will be determined solely upon the motion, and without responses thereto or oral argument.

The clerk of the appellate court will forthwith notify the applicant and all parties of the court's action upon the application. Unless other time limits are set out in the order of the Court permitting the brief, the *amicus curiae* shall file the brief within the time allowed for the filing of the brief of the party supported or, if in support of neither party, within the time allowed for filing appellant's brief. Motions for leave to file an amicus curiae brief submitted to the Court after the time within which the amicus curiae brief normally would be due are disfavored in the absence of good cause. Reply briefs of the parties to an *amicus curiae* brief will be limited to points or authorities presented in the *amicus curiae* brief which are not presented in the main briefs of the parties. No reply brief of an *amicus curiae* will be received.

A motion of an *amicus curiae* to participate in oral argument will be allowed only for extraordinary reasons.

(j) *Page limitations applicable to briefs filed in the Court of Appeals.* Each brief filed in the North Carolina Court of Appeals, whether filed by appellant, appellee, or *amicus curiae,* formatted according to Rule 26 and the Appendixes to these Rules, shall have either a page limit or a word-count limit, depending on the type style used in the brief:

(1) *Type.*

(A) *Type style.* Documents must be set in a plain roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. Documents may be set in either proportionally spaced or nonproportionally spaced (monospaced) type.

(B) *Type size.*

1. Nonproportionally spaced type (e.g., Courier or Courier New) may not contain more than 10 characters per inch (12-point).

2. Proportionally spaced type (e.g., Times New Roman), must be 14-point or larger.

3. Documents set in Courier New 12-point type, or Times New Roman 14-point type will be deemed in compliance with these type-size requirements.

(2) *Document length.*

(A) *Length limitations on briefs filed in the Court of Appeals.* Every brief filed in the Court of Appeals, whether filed by an appellant, appellee, or amicus curiae, shall be subject to either a page limit or a word-count limit, depending on the type style used in the brief.

1. *Page limits for briefs using nonproportional type.* The page limit for a principal brief that uses nonproportional (e.g., Courier) type is 35 pages. The page limit for a reply brief permitted by Rule 28(h)(1), (2), or (3) is 15 pages, and the page limit for a reply brief permitted by Rule 28(h)(4) is 12 pages. Unless otherwise ordered by the Court, the page limit for an amicus curiae brief is 15 pages. A page shall contain no more than 27 lines of double-spaced text of no more than 65 characters per line. Covers, indexes, tables of authorities, certificates of service, and appendixes do not count toward these page limits. The Court may strike or require resubmission of briefs with

excessive single-spaced passages or footnotes that are used to circumvent these page limits.

2. *Word-count limits for briefs in proportional type.* A principal brief that uses proportional type may contain no more than 8,750 words. A reply brief permitted by Rule 28(h)(1), (2), or (3) may contain no more than 3,750 words, and a reply brief permitted by Rule 28(h)(4) may contain no more than 3,000 words. Unless otherwise ordered by the Court, an amicus curiae brief may contain no more than 3,750 words. Covers, indexes, tables of authorities, certificates of service, certificates of compliance with this rule, and appendixes do not count against these word-count limits. Footnotes and citations in the text, however, do count against these word-count limits. Parties who file briefs in proportional type shall submit along with the brief, immediately before the certificate of service, a certification, signed by counsel of record, or, in the case of parties filing briefs pro se, by the party, that the brief contains no more than the number of words allowed by this rule. For purposes of this certification, counsel and parties may rely on word counts reported by word-processing software, as long as footnotes and citations are included in those word counts.

(k) *Termination of Parental Rights and Juvenile Matters.* No brief shall include the name of a juvenile or other identifying information, in compliance with Rule 3(b). (Adopted June 13, 1975; Amended January 27, 1981 — repealed 28(d) — effective July 1, 1981; Amended June 10, 1981 — 28(b), (c) — effective October 1, 1981; Amended January 12, 1982 — 28(b)(4) — effective March 15, 1982; Amended December 7, 1982 — 28(i) — effective January 1, 1983; Amended November 27, 1984 — 28(b), (c), (d), (e), (g), (h) — effective February 1, 1985; Amended June 30, 1988 — 28(a), (b), (c), (d), (e), (h), (i) — effective September 1, 1988; Amended June 8, 1989 — 28(h), (j) — effective September 1, 1989; Amended July 26, 1990 — 28(h)(2) — effective October 1, 1990; Amended October 18, 2001 — 28(b)(4)-(10), (c), (j) —effective October 31, 2001; Amended October 3, 2002 — 28(j) — effective October 7, 2002; Amended May 6, 2004 — 28(d), (h), (j), (k) — effective May 12, 2004; Amended August 23, 2005 — 28(b)(6), (c), (h)(4) — effective September 1, 2005; January 25, 2007 — 28(b)(6), para. 1; 28(c), para. 1; 28(d)(3)(a), (b); 28(i), paras. 2, 3; 28(j)(2)(A)(1) & (2); added 28(d)(1)(d) — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

CASE NOTES

I. In General.

I. IN GENERAL.

Statement of Standard of Review. — N.C. R. App. P. 28(b)(6) required not only that an argument contain a concise statement of the applicable standard(s) of review, but also that the statement of the standards of review contain citations of the authorities upon which an appellant relied. Overcash v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 635 S.E.2d 442, 2006 N.C. App. LEXIS 2168 (2006).

Property owner's appellate brief failed to comply with N.C.R.A.P., Rule 28(b)(6) in that it did not contain a concise statement of the applicable standard(s) of review for each question presented along with citations of the authorities upon which the owner relied; therefore, when viewed in tandem with the owner's other failures to comply with the North Carolina Rules of Appellate Procedure, the nature and significance of the owner's rules violations warranted dismissal of his appeal. Pers. Earth Movers, Inc. v. Thomas, — N.C. App. —, 641 S.E.2d 751, 2007 N.C. App. LEXIS 577 (2007).

Questions Must Be Presented in Brief. — Because the city failed to include in its brief any argument or legal authority in support of its assignments of error in regard to the workers' compensation case, the assignments of error were deemed abandoned. Rose v. City of Rocky Mount, — N.C. App. —, 637 S.E.2d 251, 2006 N.C. App. LEXIS 2413 (2006).

Abandonment of Assignments of Error. —

Appellate court deemed that shareholders' abandoned their assignments of error on appeal, pursuant to N.C. R. App. P. 28(b)(6), because the shareholders did not argue them on appeal. Barnes v. Kochhar, — N.C. App. —,

633 S.E.2d 474, 2006 N.C. App. LEXIS 1574 (2006).

When respondent, a juvenile, presented arguments for only three of his eight assignments of error, the five assignments of error for which no argument had been presented were deemed abandoned. In re S.R.S., — N.C. App. —, 636 S.E.2d 277, 2006 N.C. App. LEXIS 2233 (2006).

When defendant in a criminal case did not argue his remaining assignments of error, the court deemed them abandoned. State v. Ryals, — N.C. App. —, 635 S.E.2d 470, 2006 N.C. App. LEXIS 2161 (2006).

Citizens who sought to block the building of a modular school abandoned their assignment of error to the trial court's dismissal of their claims based on mootness under N.C.R.A.P., Rule 28(b)(6) because they submitted no authority in support of their contention that the trial court erred in concluding that their claims were moot; nevertheless, pursuant to its discretion under N.C.R.A.P., Rule 2, the appellate court elected to suspend the appellate rules and to reach the merits of the mootness contentions. Citizens Addressing Reassignment & Educ., Inc. v. Wake County Bd. of Educ., — N.C. App. —, 641 S.E.2d 824, 2007 N.C. App. LEXIS 593 (2007).

Because a hospital and its insurance carrier failed to set forth argument pertaining to their remaining assignments of error, an appellate court therefore deemed them abandoned under N.C. R. App. P. 28(b)(6). Legette v. Scotland Mem'l Hosp., — N.C. App. —, 640 S.E.2d 744, 2007 N.C. App. LEXIS 361 (2007).

Defendant failed to argue his remaining assignments of error on appeal; thus, they were deemed abandoned pursuant to N.C. R. App. P. 28(b)(6). State v. Clemmons, — N.C. App. —, 639 S.E.2d 110, 2007 N.C. App. LEXIS 155 (2007).

Homeowner violated N.C. R. App. P. 10(c)(1) and her appeal was dismissed as she failed to support her assignments of error regarding the exclusion of evidence with any record page reference to the order she purported to appeal; the appeal was therefore abandoned pursuant to N.C. R. App. P. 28(b)(6). Jones v. Harrelson & Smith Contrs., LLC, — N.C. App. —, 638 S.E.2d 222, 2006 N.C. App. LEXIS 2521 (2006).

Abandonment of Issue. —

Although a mother whose children were placed in protective custody stated in the heading for her first question presented on appeal that the trial court erred in not dismissing the neglect and dependency petition, she failed to adequately argue this point in her brief; appellate court therefore concluded that she abandoned this argument under N.C. R. App. P. 28(b)(6). In re T.S., — N.C. App. —, 631 S.E.2d 19, 2006 N.C. App. LEXIS 1299 (2006).

Although plaintiff property owner asserted on appeal that a trial court erred by granting the motion of defendants, a water company and property owners, for summary judgment with respect to plaintiff's claims for trespass, nuisance, unjust enrichment, and unfair trade practices, plaintiff's brief included argument only as to his trespass claim, and therefore his appeal as to the remaining claims was abandoned pursuant to N.C. R. App. P. 28(a). Woodring v. Swieter, — N.C. App. —, 637 S.E.2d 269, 2006 N.C. App. LEXIS 2387 (2006).

Issues Raised in Defendant's Brief, But Not Supported by Argument or Authority, Are Deemed Abandoned Under N.C. R. App. P. 28(b)(6). —

Defendants' inclusion of "facts" not supported by the record was inappropriate; accordingly, the appellate court gave them no heed. Baxley v. Jackson, — N.C. App. —, 634 S.E.2d 905, 2006 N.C. App. LEXIS 2055 (2006).

Failure to Meet Requirements of Subdivision (b)(5). —

Husband's appeal was dismissed in part because, although he made a halfhearted attempt in his brief to comply with N.C. R. App. P. 28(b)(5) by providing sporadic record and transcript citations in the first few pages of his statement of the facts, there was no citation to the record or transcripts in either of the last two lengthy paragraphs. Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Property owner's statement of the facts in his appellate brief contravened the requirements of N.C.R.A.P., Rule 28(b)(5) because, despite a large record, the account of the facts was exactly one paragraph with 18 lines; therefore, when viewed in tandem with the owner's other failures to comply with the North Carolina Rules of Appellate Procedure, the nature and significance of the owner's rules violations warranted dismissal of his appeal. Pers. Earth Movers, Inc. v. Thomas, — N.C. App. —, 641 S.E.2d 751, 2007 N.C. App. LEXIS 577 (2007).

Relief as Matter of Appellate Grace. —

Although an employee's brief failed to comply with N.C. R. App. P. 28(b)(4) and (6) by failing to include a statement of the grounds for appellate review and a concise statement of the applicable standards of review for each question, the rule violations, while serious, were not so egregious as to warrant dismissal of the appeal because: (1) reaching the merits of the case did not create an appeal for the employee or cause the court to examine issues not raised by the employee; and (2) the employer was given sufficient notice of the issues on appeal as evidenced by the filing of its brief thoroughly responding to the employee's arguments; as a result, the court elected to review the merits of the employee's appeal pursuant to N.C. R. App. P. 2. Hassell v. Onslow County Bd. of Educ., — N.C. App. —, 641 S.E.2d 324, 2007 N.C. App. LEXIS 487 (2007).

Failure to Cite Authority. —

When plaintiff cited no authority in support of its argument, it had abandoned the assignment of error under N.C. R. App. P. 28(b)(6). James River Equip., Inc. v. Mecklenburg Utils., Inc., — N.C. App. —, 634 S.E.2d 557, 2006 N.C. App. LEXIS 1898 (2006).

Although an attorney challenged the propriety of a trial court imposing sanctions against him under G.S. 1A-1-11, he provided no authority, as required under N.C. R. App. P. 28(b)(6), to support his contention that the judge, by expressing personal opinions regarding the case during a hearing, violated N.C. Code Jud. Conduct 5(E) by improperly assuming the role of a mediator, and therefore was stripped of the authority to impose sanctions. Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Private citizens argument that the Utilities Commission's approval of a utility's preferred route for a transmission line was arbitrary and capricious was dismissed because the citizens failed to cite any authorities upon which they relied; further, it was not the role of the appellate court to create an appeal for the citizens. State ex rel. Utils. Comm'n v. Wardlaw, — N.C. App. —, 634 S.E.2d 898, 2006 N.C. App. LEXIS 2041 (2006).

When defendant failed to cite any authority for its interlocutory appeals of the denials of its motion to dismiss based on failure to prosecute and of its motion to costs, these assignments of error were dismissed. N.C. DOT v. County of Durham, — N.C. App. —, 638 S.E.2d 577, 2007 N.C. App. LEXIS 78 (2007).

Citation of Authority in Assignments of Error Precluded. — Even though a wife claimed that the husband abandoned the majority of his arguments by failing to cite to supporting authority in his assignments of error to the appellate court, the husband had indeed complied with N.C. R. App. P. 28(b)(6) by presenting arguments to the appellate court which contained citations of the authorities upon which he relied. Morris v. Gray, — N.C. App. —, 640 S.E.2d 737, 2007 N.C. App. LEXIS 258 (2007).

Failure to observe the requirements of subdivision (b)(4), etc.

Property owner did not include a statement of the grounds for appellate review in his brief in accordance with N.C.R.A.P., Rule 28(b)(4); therefore, when viewed in tandem with the owner's other failures to comply with the North Carolina Rules of Appellate Procedure, the nature and significance of the owner's rules violations warranted dismissal of his appeal. Pers. Earth Movers, Inc. v. Thomas, — N.C. App. —, 641 S.E.2d 751, 2007 N.C. App. LEXIS 577 (2007).

Improper Documents in Appendix. —

The inclusion in an appendix of materials from outside the record violated N.C. R. App. P. 28(d) and could have subjected defendants to sanctions; although the appellate court, in its discretion, elected not to impose such sanctions. Woodring v. Swieter, — N.C. App. —, 637 S.E.2d 269, 2006 N.C. App. LEXIS 2387 (2006).

Briefs Held to Violate Rule. —

Neighbor's only assignment of error in record on appeal lacked references to the record or transcript as required by N.C. R. App. P. 10(c)(1); further, the neighbor's brief contained no reference to the lone assignment of error nor the numbers and pages by which it appeared in the record, in violation of N.C. R. App. P. 28(b)(6), and the appeal was dismissed. Walsh v. Town of Wrightsville Beach Bd. of Alderman, — N.C. App. —, 632 S.E.2d 271, 2006 N.C. App. LEXIS 1685 (2006).

Husband's appeal was dismissed, in part, because the argument in the appellate brief failed to contain a concise statement of the applicable standard(s) of review for each question presented as well as any citation of authorities supporting such a standard of review as required by N.C. R. App. P. 28(b)(6). Stann v. Levine, — N.C. App. —, 636 S.E.2d 214, 2006 N.C. App. LEXIS 2252 (2006).

Defendant's counsel was sanctions and was required to personally pay the printing costs of an appeal because he violated N.C. R. App. P. 26(g)(1) by single-spacing the argument section of his brief and because he failed to include a statement of the standard of review as required under N.C. R. App. P. 28(b)(6). State v. Lockhart, — N.C. App. —, 639 S.E.2d 5, 2007 N.C. App. LEXIS 89 (2007).

Single Violation Not Substantial. — Where dominant tract owners were granted a prescriptive easement, the servient tract owner's counsel was ordered to pay the printing costs of the appeal pursuant to N.C. R. App. P. 34(b) because the servient tract owner did not provide an applicable standard of review or citation of authorities supporting such a standard in the appellate brief, and the single violation was not substantial. Caldwell v. Branch, — N.C. App. —, 638 S.E.2d 552, 2007 N.C. App. LEXIS 91 (2007).

Appeal Proper Where Substantial Right Affected. — Widow sufficiently established that the order below affected a substantial right and that interlocutory review was therefore appropriate under circumstances in which the trial court had ordered the widow to pay $150,000 which she had withdrawn from a decedent's bank account. Estate of Redden v. Redden, — N.C. App. —, 632 S.E.2d 794, 2006 N.C. App. LEXIS 1638 (2006).

Consideration of Appeal Despite Failure to Comply with Rule. — Although the appellants' brief did not conform completely to the mandates of the North Carolina Rules of Appellate Procedure, thereby subjecting their appeal

to dismissal, the appellate court nevertheless elected to reach the merits of their appeal; the court found that it was proper not to dismiss the appeal because, inter alia, the court did not believe that the appellees were substantially prejudiced as the appellants' assignments of error were specific enough to put the appellees on notice of the contested issues and upon what basis the court might rule, and maintaining the integrity of the laws through proper interpretation and application outweighed the importance of dismissal in a case in which the rules violations had little to no impact. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Although counsel's statement of facts was neither full, complete, nor non-argumentative, as required by N.C. R. App. P. 28, the appellate court considered the appeal because it would have been unjust to penalize defendant; however, pursuant to N.C. R. App. P. 25 and N.C. R. App. P. 34, defendant's counsel was ordered to personally pay costs. State v. Cagle, — N.C. App. —, 641 S.E.2d 705, 2007 N.C. App. LEXIS 476 (2007).

Appellate court agreed to hear defendant's appeal of defendant's conviction of habitual impaired driving despite the fact that it could have dismissed the appeal because defendant violated the state rules of appellate procedure by failing to identify assignments of errors by the pages at which they appear in the printed record on appeal; however, it also deemed abandoned defendant's assignment of errors not argued in defendant's brief. State v. Bradley, — N.C. App. —, 640 S.E.2d 432, 2007 N.C. App. LEXIS 251 (2007).

Applied in State v. Blankenship, — N.C. App. —, 631 S.E.2d 208, 2006 N.C. App. LEXIS 1412 (2006); State v. Taylor, — N.C. App. —, 632 S.E.2d 218, 2006 N.C. App. LEXIS 1575 (2006); Megremis v. Megremis, — N.C. App. —, 633 S.E.2d 117, 2006 N.C. App. LEXIS 1828 (2006); State v. Henderson, — N.C. App. —, 632 S.E.2d 818, 2006 N.C. App. LEXIS 1832 (2006); State v. Sink, — N.C. App. —, 631 S.E.2d 16, 2006 N.C. App. LEXIS 1312 (2006); In re L.A.B., — N.C. App. —, 631 S.E.2d 61, 2006 N.C. App. LEXIS 1409 (2006); Shelton v. Duke Univ. Health Sys., — N.C. App. —, 633 S.E.2d 113, 2006 N.C. App. LEXIS 1628 (2006); State v. Hill, — N.C. App. —, 632 S.E.2d 777, 2006 N.C. App. LEXIS 1636 (2006); King v. Windsor Capital Group, Inc., — N.C. App. —, 632 S.E.2d 557, 2006 N.C. App. LEXIS 1643 (2006); Calhoun v. WHA Med. Clinic, PLLC, — N.C. App. —, 632 S.E.2d 563, 2006 N.C. App. LEXIS 1654 (2006); State v. Teate, — N.C. App. —, 638 S.E.2d 29, 2006 N.C. App. LEXIS 2515 (2006); State v. Holt, — N.C. App. —, 639 S.E.2d 65, 2007 N.C. App. LEXIS 22 (2007); In re L.B., — N.C. App. —, 639 S.E.2d 23, 2007 N.C. App. LEXIS 84 (2007); State v. Theer, — N.C. App. —, 639 S.E.2d 655, 2007 N.C. App. LEXIS 151 (2007); In re A.S., — N.C. App. —, 641 S.E.2d 400, 2007 N.C. App. LEXIS 484 (2007); State v. Erickson, — N.C. App. —, 640 S.E.2d 761, 2007 N.C. App. LEXIS 262 (2007); State v. Anderson, — N.C. App. —, 640 S.E.2d 797, 2007 N.C. App. LEXIS 410 (2007).

Quoted in State v. Henderson, — N.C. App. —, — S.E.2d —, 2007 N.C. App. LEXIS 671 (Apr. 3, 2007).

Cited in Duke Energy Corp. v. Malcolm, — N.C. App. —, 630 S.E.2d 693, 2006 N.C. App. LEXIS 1300 (2006); Wooten v. Newcon Transp., Inc., — N.C. App. —, 632 S.E.2d 525, 2006 N.C. App. LEXIS 1670 (2006); Bobbitt v. N.C. State Univ., — N.C. App. —, 635 S.E.2d 463, 2006 N.C. App. LEXIS 2164 (2006); State v. Locklear, — N.C. App. —, 636 S.E.2d 284, 2006 N.C. App. LEXIS 2248 (2006); State v. Smith, — N.C. App. —, 636 S.E.2d 267, 2006 N.C. App. LEXIS 2251 (2006); State v. Faulkner, — N.C. App. —, 638 S.E.2d 18, 2006 N.C. App. LEXIS 2504 (2006); State v. Gillespie, — N.C. App. —, 638 S.E.2d 481, 2006 N.C. App. LEXIS 2512 (2006); In re T.M., — N.C. App. —, 638 S.E.2d 236, 2006 N.C. App. LEXIS 2514 (2006); State v. Andujar, — N.C. App. —, 636 S.E.2d 584, 2006 N.C. App. LEXIS 2292 (2006); State v. Teel, — N.C. App. —, 637 S.E.2d 288, 2006 N.C. App. LEXIS 2380 (2006); In re J.M.W., — N.C. App. —, 635 S.E.2d 916, 2006 N.C. App. LEXIS 2116 (2006); In re Will of McFayden, — N.C. App. —, 635 S.E.2d 65, 2006 N.C. App. LEXIS 2053 (2006); State v. Pointer, — N.C. App. —, 638 S.E.2d 909, 2007 N.C. App. LEXIS 93 (2007).

Rule 32. Mandates of the courts.

CASE NOTES

Cited in State v. Dorton, — N.C. App. —, 641 S.E.2d 357, 2007 N.C. App. LEXIS 472 (2007).

Rule 34. Frivolous appeals; Sanctions.

CASE NOTES

Sanctions Imposed on Counsel. — Pursuant to N.C. R. App. P. 25 and N.C. R. App. P. 34, defendant's counsel was ordered to personally pay the costs of defendant's appeal because counsel's statement of facts was neither full, complete, nor non-argumentative, as required by N.C. R. App. P. 28. State v. Cagle, — N.C. App. —, 641 S.E.2d 705, 2007 N.C. App. LEXIS 476 (2007).

Where dominant tract owners were granted a prescriptive easement, the servient tract owner's counsel was ordered to pay the printing costs of the appeal pursuant to N.C. R. App. P. 34(b) because the servient tract owner did not provide an applicable standard of review or citation of authorities supporting such a standard in the appellate brief, and the single violation was not substantial. Caldwell v. Branch, — N.C. App. —, 638 S.E.2d 552, 2007 N.C. App. LEXIS 91 (2007).

Cited in In re T.M., — N.C. App. —, 638 S.E.2d 236, 2006 N.C. App. LEXIS 2514 (2006).

Rule 37. Motions in appellate courts.

(a) *Time; Content of motions; Response.* An application to a court of the appellate division for an order or for other relief available under these rules may be made by filing a motion for such order or other relief with the clerk of the court, with service on all other parties. Unless another time is expressly provided by these rules, the motion may be filed and served at any time before the case is called for oral argument. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion and shall state with particularity the grounds on which it is based and the order or relief sought. If a motion is supported by affidavits, briefs, or other papers, these shall be served and filed with the motion. Within 10 days after a motion is served upon him or until the appeal is called for oral argument, whichever period is shorter, a party may file and serve copies of a response in opposition to the motion, which may be supported by affidavits, briefs, or other papers in the same manner as motions. The court may shorten or extend the time for responding to any motion.

(b) *Determination.* Notwithstanding the provisions of Rule 37(a), a motion may be acted upon at any time, despite the absence of notice to all parties, and without awaiting a response thereto. A party who has not received actual notice of such a motion or who has not filed a response at the time such action is taken, and who is adversely affected by the action may request reconsideration, vacation or modification thereof. Motions will be determined without argument, unless the court orders otherwise.

(c) *Termination of Parental Rights and Juvenile Matters.* Any motion or response to a motion filed in the appellate courts shall not include the name of a juvenile, in compliance with Rule 3(b).

(d) *Withdrawal of Appeal in Criminal Cases.* Withdrawal of appeal in criminal cases shall be in accordance with G.S. 15A-1450. In addition to the requirements of G.S. 15A-1450, after the record on appeal ina criminal case has been filed in an appellate court but before the filing of an opinion, the defendant shall also file a written notice of the withdrawal with the clerk of the appropriate appellate court.

(e) *Withdrawal of Appeal in Civil Cases.*

(1) Prior to the filing of a record on appeal in the appellate court, an appellant or cross-appellant may, without the consent of the other party, file a notice of withdrawal of its appeal with the tribunal from which appeal has been taken. Alternatively, prior to the filing of a record on appeal, the parties may file a signed stipulation agreeing to dismiss the appeal with the tribunal from which the appeal has been taken.

(2) After the record on appeal has been filed, an appellant or cross-appellant or all parties jointly may move the appellate court in which the appeal is

pending, prior to the filing of an opinion, for dismissal of the appeal. The motion must specify the reasons therefor, the positions of all parties on the motion to dismiss, and the positions of all parties on the allocation of taxed costs. The appeal may be dismissed by order upon such terms as agreed to by the parties or as fixed by the appellate court.

(f) *Effect of Withdrawal of Appeal.* The withdrawal of an appeal shall not affect the right of any other party to file or continue such party's appeal or cross-appeal. (Adopted June 13, 1975; Amended May 6, 2004 — (3)(c) — effective May 12, 2004; January 25, 2007 — added 37(d)-(f) — effective March 1, 2007 and applicable to all cases appealed on or after that date.)

CASE NOTES

I. In General.

I. IN GENERAL.

Motion Untimely. — Defendant's amended motion for appropriate relief did not amend the original motion for appropriate relief and alleged new grounds for relief based on ineffective assistance of counsel; the amended motion was untimely and was dismissed without prejudice to defendant to file a new motion for appropriate relief in the trial court. State v. Brigman, — N.C. App. —, 632 S.E.2d 498, 2006 N.C. App. LEXIS 1298 (2006), appeal dismissed, cert. denied, 636 S.E.2d 813 (N.C. 2006).

APPENDIXES

Appendix D. Forms.

Captions for all documents filed in the Appellate Division should be in the format prescribed by Appendix B, addressed to the Court whose review is sought.

1. Notices of Appeal

a. *to Court of Appeals from Trial Division*
Appropriate in all appeals of right from district or superior court except appeals from criminal judgments imposing sentences of death.

(Caption)

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TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:
(Plaintiff) (Defendant) (Name of Party) hereby gives notice of appeal to the Court of Appeals of North Carolina (from the final judgment) (from the order) entered on (date) in the (District) (Superior) Court of (name) County, (describing it).

Respectfully submitted this ____ day of _____ 2_____.

s/_____
Attorney for (Plaintiff) (Defendant)
(Address and Telephone)

b. *to Supreme Court from a Judgment of the Superior Court Including a Sentence of Death*

(Caption)

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:
(Name of Defendant), Defendant, hereby gives notice of appeal to the Supreme Court of North Carolina from the final judgment, entered by (name of Judge), in the Superior Court of (name) County on (date), which judgment included a conviction of murder in the first degree and a sentence of death.

Respectfully submitted this ____ day of _____ 2_____.

s/_____
Attorney for Defendant-Appellant
(Address and Telephone)

c. *to the Supreme Court from a Judgment of the Court of Appeals*
Appropriate in all appeals taken as of right from opinions and judgments of the Court of Appeals to the Supreme Court under G.S. 7A-30. The appealing party shall enclose a clear copy of the opinion of the Court of Appeals with the notice. To take account of the possibility that the Supreme Court may determine that the appeal does not lie of right, an alternative petition for discretionary review may be filed with the notice of appeal.

(Caption)

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff) (Defendant) (name of party) hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals (describe it), which judgment ...

(*Constitutional question* — G.S. 7A-30(1)) ... directly involves substantial questions arising under the Constitution(s) (of the United States) (and) (or) (of the State of North Carolina) as follows:

(here describe the specific issues, citing Constitutional provisions under which they arise, and showing how such issues were timely raised below and are set out in the record on appeal, e.g.:

"Question 1: Said judgment directly involves a substantial question arising under the Fourth and Fourteenth Amendments to the Constitution of the United States and under Article 1, Section 20 of the Constitution of the State of North Carolina, in that it deprives rights secured thereunder to the defendant by overruling defendant's assignment of error to the denial of his Motion to Suppress Evidence Obtained by a Search Warrant, thereby depriving defendant of his Constitutional right to be secure in his person, house, papers, and effects, against unreasonable searches and seizures and violating constitutional prohibitions against warrants issued without probable cause and warrants not supported by evidence. This constitutional issue was timely raised in the trial tribunal by defendant's Motion to Suppress Evidence Obtained by a Search Warrant made prior to trial of defendant (R pp. 7 through 10). This constitutional issue was determined erroneously by the Court of Appeals.")

In the event the Court finds this constitutional question to be substantial, petitioner intends to present the following issues in his brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those which are the basis of the constitutional question claim. An issue may not be briefed if it is not listed in the notice of appeal.)

(*dissent* — G.S. 7A-30(2)) ... was entered with a dissent by Judge (name), based on the following issue(s):

(Here state the issue or issues which are the basis of the dissenting opinion in the Court of Appeals. Do not state additional issues as with the constitutional question appeal, above. Any additional issues desired to be raised in the Supreme Court where the appeal of right is based solely on a dissenting opinion must be presented by a petition for discretionary review as to the additional issues.)

Respectfully submitted this ____ day of _____ 2_____.

s/_____
Attorney for (Plaintiff) (Defendant)-Appellant
(Address and Telephone)

2. Appeal Entries

The appeal entries are appropriate as a ready means of providing in composite form for the record on appeal:

1) the entry required by App. Rule 9(a) showing appeal duly taken by oral notice under App. Rule 3(b) or 4(a) and

2) the entry required by App. Rule 9(a) showing any judicial extension of time for serving proposed record on appeal under App. Rule 27(c).

These entries of record may also be made separately.

Where appeal is taken by filing and serving written notice after the term of court, a copy of the notice with filing date and proof of service is appropriate as the record entry required.

Such "appeal entries" are appropriately included in the record on appeal following the judgment from which appeal is taken.

The judge's signature, while not technically required, is traditional and serves as authentication of the substance of the entries.

(Defendant) gave due notice of appeal to the (Court of Appeals) (Supreme Court). (Defendant) shall have 10 days in which to order the transcript, or, in the alternative, 35 days in which to serve a proposed record on appeal on the appellee. (Plaintiff) is allowed 21 days thereafter within which to serve objections or a proposed alternative record on appeal.

This ____ day of _____ 2_____.

s/_____
Judge Presiding

3. Petition for Discretionary Review Under G.S. 7A-31

To seek review of the opinion and judgment of the Court of Appeals where appellant contends case involves issues of public interest or jurisprudential significance. May also be filed as a separate paper in conjunction with a notice of appeal to the Supreme Court when the appellant considers that such appeal lies of right due to substantial constitutional questions under G.S. 7A-30, but desires to have the Court consider discretionary review should it determine that appeal does not lie of right in the particular case.

(Caption)

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions the Supreme Court of North Carolina that the Court certify for discretionary review the judgment of the Court of Appeals (describing it) on the basis that (here set out the grounds from G.S. 7A-31 which provide the basis for the petition). In support of this petition, (Plaintiff) (Defendant) shows the following:

Facts

(Here state first the procedural history of the case through the trial division and the Court of Appeals. Then set out factual background necessary for understanding the basis of the petition.)

Reasons Why Certification Should Issue

(Here set out factual and legal argument to justify certification of [the] case for full review. While some substantive argument will certainly be helpful, the focus of the argument in the petition should be to show how the opinion of the Court of Appeals conflicts with prior decisions of the Supreme Court or how the case is one significant to the jurisprudence of the State or one which offers significant public interest. If the Court is persuaded [to] take the case, then the appellant may deal thoroughly with the substantive issues in the new brief.)

Issues to Be Briefed

In the event the Court allows this petition for discretionary review, petitioner intends to present the following issues in his brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those which are the basis of the petition. An issue may not be briefed if it is not listed in the petition.)

Respectfully submitted this ____ day of _____ 2_____.

s/_____
Attorney for (Plaintiff) (Defendant)
(Address and Telephone)

Attached to the petition shall be a certificate of service upon the opposing parties and a clear copy of the opinion of the Court of Appeals in [the] case.

4. Petition for Writ of Certiorari

To seek review 1) of the judgments or orders of trial tribunals in the appropriate appellate court when the right to prosecute an appeal has been lost or where no right to appeal exists; 2) by the Supreme Court of the decisions and orders of the Court of Appeals where no right to appeal or to petition for discretionary review exists or where such right has been lost by failure to take timely action.

(Caption)

****

TO THE HONORABLE (SUPREME COURT) (COURT OF APPEALS) OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the N.C. Rules of Appellate Procedure to review the (judgment) (order) (decree) of the [Honorable (name), Judge Presiding, (name) County Superior (District) Court] [North Carolina Court of Appeals], dated (date), (here describe the judgment, order, or decree appealed from), and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis petition: e.g., failure to perfect appeal by reason of circumstances constituting excusable neglect; nonappealability of right of an interlocutory order, etc.) (If circumstances are that transcript could not be procured from reporter, statement should include estimate of date of availability, and supporting affidavit from the Court Reporter.)

Reasons Why Writ Should Issue

(Here set out factual and legal argument to justify issuance of writ: e.g., reasons why interlocutory order makes it impractical for petitioner to proceed further in trial court; meritorious basis of petitioner's proposed assignments of error; etc.)

Attachments

Attached to this petition for consideration by the Court are certified copies of the (judgment) (order) (decree) sought to be reviewed, and (here list any other certified items from the trial court record and any affidavits attached as pertinent to consideration of the petition.)

Wherefore, petitioner respectfully prays that this Court issue its writ of certiorari to the [Superior Court of (name) County] [North Carolina Court of

Appeals] to permit review of the (judgment) (order) (decree) above specified, upon errors [(to be) assigned in the record on appeal constituted in accordance with the Rules of Appellate Procedure] [stated as follows: (here list the errors, as issues, in the manner provided for the petition for discretionary review)]; and that the petitioner have, such other relief as to the Court may seem proper.

Respectfully submitted, this the ____ day of _____, 2_____.

s/_____
Attorney for Petitioner
(Address and Telephone)

(Verification by petitioner or counsel)
(Certificate of service upon opposing parties)
(Attach a clear copy of the opinion, order, etc., which is the subject of the petition and other attachments as described in petition.)

5. Petition for Writ of Supersedeas Under Rule 23 and Motion for Temporary Stay

A writ of supersedeas operates to stay the execution or enforcement of any judgment, order, or other determination of a trial court or of the Court of Appeals in civil cases under Appellate Rule 8 or to stay imprisonment or execution of a sentence of death in criminal cases (other portions of criminal sentences, e.g., fines, are stayed automatically pending an appeal of right).

A motion for temporary stay is appropriate to show good cause for immediate stay of execution on an ex parte basis pending the Court's decision on the Petition for Supersedeas or the substantive petition in the case.

(Caption)

****

TO THE HONORABLE (COURT OF APPEALS) (SUPREME COURT) OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions this Court to issue its writ of supersedeas to stay (execution) (enforcement) of the (judgment) (order) (decree) of the [Honorable _____, Judge Presiding, (Superior) (District) Court of _____ County] [North Carolina Court of Appeals] dated _____, pending review by this Court of said (judgment) (order) (decree) which (here describe the judgment, order, or decree and its operation if not stayed); and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding basis of petition and justifying its filing under Rule 23: e.g. trial judge has vacated the entry upon finding security deposited under G.S. Section _____ inadequate; or that trial judge has refused to stay execution upon motion therefor by petitioner; or that circumstances make it impracticable to apply first to trial judge for stay, etc.; and showing that review of the trial court judgment is being sought by appeal or extraordinary writ.)

Reasons Why Writ Should Issue

(Here set out factual and legal argument for justice of issuing writ: e.g., that security deemed inadequate by trial judge is adequate under the circumstances; that irreparable harm will result to petitioner if he is required to obey

decree pending its review; that petitioner has meritorious basis for seeking review, etc.)

Attachments

Attached to this petition for consideration by the court are certified copies of the (judgment) (order) (decree) sought to be stayed and (here list any other certified items from the trial court record and any affidavits deemed necessary to consideration of the petition).

Wherefore, petitioner respectfully prays that this Court issue its writ of supersedeas to the [(Superior) (District) Court of _____ County)] [(North Carolina Court of Appeals)] staying (execution) (enforcement) of its (judgment) (order) (decree) above specified, pending issuance of the mandate to this Court following its review and determination of the (Appeal) (discretionary review) (review by extraordinary writ) (now pending) (the petition for which will be timely filed); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted, this the ____ day of _____, 2_____.

s/_____
Attorney for Petitioner
(Address and Telephone)

(Verification by petitioner or counsel.)
(Certificate of Service upon opposing party.)

Rule 23(e) provides that in conjunction with such a petition for supersedeas, either as part of it or separately, the petitioner may move for a temporary stay of execution or enforcement pending the Court's ruling on the petition for supersedeas. The following form is illustrative of such a motion for temporary stay, either included in the main petition as part of it or filed separately.

Motion for Temporary Stay

(Plaintiff) (Defendant) respectfully applies to the Court for an order temporarily staying (execution) (enforcement) of the (judgment) (order) (decree) which is the subject of (this) (the accompanying) petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall issue its writ. In support of this Application, movant shows that (here set out the legal and factual argument for the issuance of such a temporary stay order; e.g., irreparable harm practically threatened of [if] petitioner must obey decree of trial court during interval before decision by Court whether to issue writ of supersedeas).

Motion for Stay of Execution

In death cases, the Supreme Court uses an order for stay of execution [of] death sentence in lieu of the writ of supersedeas. Counsel should promptly apply for such a stay after the judgment of the Superior Court imposing the death sentence. The stay of execution order will provide that it remains in effect until dissolved. The following form illustrates the contents needed in such a motion.

(Caption)

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now comes the defendant, (name), who respectfully shows the Court:

1. That on (date of judgment), The Honorable _____, Judge Presiding, Superior Court of _____ County, sentenced the defendant to death, execution being set for (date of execution).

2. That pursuant to G.S. 15A-2000(d)(1), there was an automatic appeal of this matter to the Supreme Court of North Carolina, and that defendant's notice of appeal was given (describe the circumstances and date of notice).

3. That the record on appeal in this case cannot be served and settled, the matter docketed, the briefs prepared, the arguments heard, and a decision rendered before the scheduled date for execution.

WHEREFORE, the defendant prays the Court to enter an Order staying the execution pending judgment and further orders of this Court.

Respectfully submitted, this the ____ day of _____, 2_____.

s/_____
Attorney for Defendant
(Address and Telephone)

(Certificate of Service on Attorney General, District Attorney, and Warden of Central Prison) (Amended March 6, 1997; Amended October 31, 2001; Amended effective March 1, 2007 and applicable to all cases appealed on or after that date.)

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RULES OF THE JUDICIAL STANDARDS COMMISSION

Adopted January 1, 1973,
with amendments received through January 1, 2007.

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Rule 1. Authority.

These rules are promulgated pursuant to the authority contained in G.S. 7A-380(a), and are effective January 1, 2007.

Rule 2. Organization.

(a) The Commission shall have a Chairperson, who is the Court of Appeals member, and two Vice-Chairpersons, each of whom shall be a superior court judge. The Vice-Chairperson with the longest tenure of service on the Commission shall preside in the absence of the Chairperson. The Executive Director shall serve as the secretary to the full Commission and to each panel, and shall perform such duties as the full Commission or a panel may assign.

(b) The Chairperson shall divide the Commission into two six (6) member panels, one to be designated Panel A and the other Panel B. Each panel shall include one (1) superior court judge, one (1) district court judge, two (2) members appointed by the North Carolina State Bar, one (1) citizen appointed by the Governor, and one (1) citizen appointed by the General Assembly. Membership on the panels may rotate in a manner determined by the Chairperson of the Commission, provided that no member, other than the Chairperson, shall sit on both the hearing and investigative panel for the same proceeding. The Chairperson of the Commission shall preside over all panel meetings. The two Vice-Chairpersons shall be assigned to different panels and each shall preside over their respective panel meetings in the absence of the Chairperson. No member, other than the Commission Chairperson who shall preside over all disciplinary hearings, who has served on an investigative panel for a particular inquiry shall serve upon the hearing panel for the same matter.

(c) The full Commission shall meet on the call of the Chairperson or upon the written request of any five (5) members. Each panel of the Commission shall meet every other month, alternating such meetings with the other panel, or upon the call of the Chairperson. Hearing panels shall also meet as needed to conduct disciplinary hearings upon the call of the Chairperson. Each

member of the Commission, including the Chairperson, Vice-Chairpersons, or other presiding member shall be a voting member.

(d) A quorum for the conduct of business of the full Commission shall consist of any nine (9) members. A quorum for the conduct of the business of a panel shall consist of five (5) members. The affirmative vote of five (5) members of a panel is required to issue a public reprimand pursuant to Rule 11. A quorum for the conduct of any disciplinary proceeding instituted pursuant to Rule 12 shall consist of five (5) members of the panel assigned to hear the proceeding. The affirmative vote of five (5) members of a hearing panel is required to make a recommendation to the Supreme Court that a judge be censured, suspended, or removed from office.

(e) The Commission shall ordinarily meet in Raleigh, but may meet anywhere in the State. The Commission's address is P.O. Box 1122, Raleigh, N.C. 27602.

Rule 3. Executive Director.

The Executive Director shall have duties and responsibilities prescribed by the Commission including but not limited to:

(1) Receive and screen complaints and allegations as to misconduct or disability, and make preliminary evaluations with respect thereto;

(2) Maintain the Commission's records;

(3) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;

(4) Prepare the Commission's budget for approval by the Commission and administer its funds;

(5) Employ and supervise other members of the Commission's staff;

(6) Prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court and to the public;

(7) Employ, with the approval of the Chairperson, a special counsel, and an investigator as necessary to investigate and process matters before the Commission and before the Supreme Court.

Rule 4. Counsel.

Commission counsel shall have duties and responsibilities prescribed by the Commission including but not limited to:

(1) Advise the Commission during its investigations and to draft decisions, orders, reports and other documents;

(2) Supervise investigations involving alleged misconduct or disability;

(3) Direct letters of notice to respondents when directed to do so by the Commission;

(4) Prosecute disciplinary proceedings before the Commission;

(5) Appear on behalf of the Commission in the Supreme Court in connection with any recommendation made by the Commission;

(6) Perform other duties at the direction of the Executive Director or Commission Chairperson.

Rule 5. Investigator.

The Investigator shall have duties and responsibilities prescribed by the Commission including, but not limited to:

(1) Conduct preliminary investigations;

(2) Conduct formal investigations, upon authorization of the Commission;

(3) Assist Counsel in the preparation and coordination of disciplinary proceedings initiated pursuant to Rule 12;

(4) Maintain records of the investigations and subsequent proceedings as set forth above;

(5) Perform other duties at the direction of the Executive Director or Commission Chairperson.

Rule 6. Confidentiality.

(a) During investigative and initial proceedings.

(1) Except as otherwise provided herein, or unless waived by the judge, at all times prior to the issuance of a public reprimand or the institution of a disciplinary proceeding alleging misconduct by or incapacity of a judge, all Commission proceedings including Commission deliberations, investigative files, records, papers and matters submitted to the Commission, shall be held confidential by the Commission, its Executive Director, Counsel, Investigator and staff except as follows:

(A) With the approval of the Commission, the investigative officer may notify respondent that a complaint has been received and may disclose to respondent the name of the person making the complaint.

(B) The Commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the Commission.

(C) The Commission may disclose information upon written waiver by the subject judge when:

(i) Public statements that charges are pending before the Commission are substantially unfair to respondent; or

(ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the Commission, after a formal investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.

(D) When the Commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(E) In any case in which a complaint filed with the Commission is made public by the complainant, the judge involved, independent sources, or by rule of law, the Commission may issue such statements of clarification and correction as it deems appropriate in the interest of maintaining confidence in the justice system. Such statements may address the status and procedural aspects of the proceeding, the judge's right to a fair hearing in accordance with due process requirements, and any official action of disposition by the Commission, including release of its written notice to the complainant or the judge of such action or disposition.

(2) The fact that a complaint has been made, or that a statement has been given to the Commission, shall be confidential during the investigation and initial proceeding except as provided in this Rule.

(3) No person providing information to the Commission shall disclose information they have obtained from the Commission concerning the investigation, including the fact that an investigation is being conducted, until the Commission issues a public reprimand, files a complaint and disciplinary proceeding, or dismisses the complaint.

(b) After Public Reprimand or Initiation of Disciplinary proceedings.

(1) Upon the issuance by the Commission of a public reprimand or the initiation of a complaint and disciplinary proceeding by the Commission, all subsequent proceedings shall be public, except as may be provided by protective order.

(2) The Commission complaint alleging misconduct or incapacity shall be available for public inspection after it has been served upon the respondent judge. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were

the basis of a finding of probable cause shall become public as of the date of the Commission's hearing.

(3) The work product of the Commission members, its Executive Director, Commission Counsel and investigator shall be confidential and shall not be disclosed.

(c) Commission Deliberations. All deliberations of the Commission in reaching a decision on the statement of charges shall be confidential and shall not be disclosed.

(d) General Applicability.

(1) No person shall disclose information obtained from Commission proceedings or papers filed only with the Commission, except information obtained from documents disclosed to the public by the Commission pursuant to this Rule. All information disclosed publicly at disciplinary hearings conducted by the Commission is not deemed confidential.

(2) Any person violating the confidentiality requirements of this Rule 6 may be subject to punishment for contempt.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal or alter records, papers, or information made confidential by the Rule. A violation of this subsection may be charged as a separate violation of the Code of Judicial Conduct.

(4) All written communications from the Commission or its employees to a judge or his or her counsel which are deemed confidential pursuant to these rules shall be enclosed in a securely sealed inner envelope which is clearly marked "Confidential".

Rule 7. Disqualification.

A judge who is a member of the Commission is disqualified from acting in any case in which he or she is a respondent, except in his or her own defense.

Rule 8. Advisory opinions.

(a) A judge may seek an informal advisory opinion as to whether conduct, actual or contemplated, conforms to the requirements of the Code of Judicial Conduct. Such informal advisory opinion may be requested verbally or in writing. The Chairperson, Executive Director, or Counsel may grant or deny a request for an informal advisory opinion. Information contained in a request for an informal advisory opinion shall be confidential, however, when a request for an informal advisory opinion discloses actual conduct which may be actionable as a violation of the Code of Judicial Conduct, the Chairperson, Executive Director, or Counsel shall refer the matter to an investigative panel of the Commission for consideration. The Chairperson, Executive Director, or Counsel may issue an informal advisory opinion to guide the inquiring judge's own prospective conduct if the inquiry is routine, the responsive advice if readily available from the Code of Judicial Conduct and formal Commission opinions, or the inquiry requires immediate response to protect the inquiring judge's right or interest. An informal advisory opinion may be issued verbally, but shall be confirmed in writing and shall approve or disapprove only the matter in issue and shall not otherwise serve as precedent and shall not be published. An inquiry requesting an opinion concerning past conduct or that presents a matter of first impression shall be referred to the Commission for formal opinion. Such informal advisory opinions shall be reviewed periodically by the Commission and, if upon such review, a majority of the Commission present and voting decided that such informal advisory opinion should be withdrawn or modified, the inquiring judge shall be notified in writing by the Executive Director. Until such notification, the judge shall be deemed to have acted in good faith if he or she acts in conformity with the informal advisory

opinion which is later withdrawn or modified. If an inquiring judge disagrees with the informal advisory opinion issued by the Chairperson, Executive Director, or Counsel, such judge may submit a written request, in accordance with subsection (b), for consideration of the inquiry by the Commission at its next regularly scheduled meeting.

(b) Any person may request that the Commission issue a formal opinion as to whether actual or contemplated conduct on the part of a judge conforms to the requirements of the Code of Judicial Conduct. Such requests for formal opinions shall be submitted to the Executive Director. Information contained in a request for a formal opinion shall not be confidential. The Commission shall determine whether to issue a formal opinion in response to such request; if the Commission determines to issue a formal opinion, it shall prepare a formal written opinion which shall state its conclusion with respect to the question asked and the reason therefor. Such formal opinions shall be provided to interested parties in the manner deemed appropriate by the Chairperson and a copy shall be provided the Appellate Reporter for publication and such Reporter shall, from time to time as directed by the Commission, publish an index of advisory opinions. Formal advisory opinions shall have precedential value in determining whether similar conduct conforms to the Code of Judicial Conduct, but shall not constitute controlling legal authority for the purposes of review of a disciplinary recommendation by a reviewing court. A formal opinion may be reconsidered or withdrawn by the Commission in the same manner in which it was issued. Until a formal advisory opinion is modified or withdrawn by the Commission or overturned by a reviewing court, a judge shall be deemed to have acted in good faith if he or she acts in conformity therewith.

(c) All inquiries, whether requesting a formal opinion or an informal advisory opinion, shall present in detail all operative facts upon which the inquiry is based, but should not disclose privileged or sensitive information which is not necessary to the resolution of the question presented.

Rule 9. Procedure upon receipt of complaint or information.

(a) The Executive Director and Commission Counsel shall review each complaint or information received by the Commission to determine whether the complaint or information, if true, discloses facts indicating that a judge has engaged in conduct which is in violation of the Code of Judicial Conduct, has engaged in willful misconduct in office, has willfully and persistently failed to perform the duties of his or her judicial office, has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or is habitually intemperate, or alleging that a judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent. If such initial review discloses no such facts so that the complaint is obviously unfounded or frivolous, the Executive Director shall notify the Chairperson who, if he or she agrees, may dismiss the complaint. The Chairperson shall inform the investigative panel of any such dismissal at the panel's next meeting and, upon the request of any member, such determination may be reconsidered; otherwise the dismissal of the complaint shall be final and the complainant shall be notified.

(b) If a complaint or information is not dismissed as frivolous or unfounded, the Executive Director and Investigator shall conduct such preliminary review as may be necessary to apprise the investigative panel of the nature thereof, and such panel shall review the complaint or information at the next meeting occurring after the complaint or information is received.

(c) If the investigative panel, by the affirmative vote of not less than five (5) members, determines that the complaint alleges, or information discloses,

facts indicating that a judge has engaged in conduct which is in violation of the Code of Judicial Conduct, has engaged in willful misconduct in office, has willfully and persistently failed to perform the duties of his or her judicial office, has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or is habitually intemperate, or alleging that a judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent, such panel shall order a formal investigation to determine whether disciplinary proceedings should be instituted.

(d) The judge shall be notified of the formal investigation, the nature of the allegations which the Commission is investigating, and whether the formal investigation is on the Commission's own motion or upon written complaint. The notice shall afford the judge a reasonable opportunity to present such relevant information as he or she may deem advisable. Such notice shall be in writing and may be personally delivered by the Chairperson, Executive Director, Commission Counsel, or Investigator, or it may be delivered by certified mail, return receipt requested.

(e) If, upon ordering an formal investigation in accordance with subparagraph (d) above, the investigative panel determines that immediate suspension of the judge is required for the proper administration of justice, it may recommend to the Chief Justice that such judge be temporarily suspended from the performance of his or her judicial duties pending final disposition of the inquiry. A copy of such recommendation shall be provided the judge by certified mail, return receipt requested.

Rule 10. Record of proceedings.

The Commission shall keep a record of all formal investigations and disciplinary proceedings concerning a judge. In disciplinary hearings, testimony shall be recorded verbatim by a court reporter and by video recording and, if the Commission recommends to the Supreme Court that the judge be censured, suspended, or removed, a transcript of the evidence and all proceedings therein shall be prepared, including a video recording of the testimony of all witnesses who testify at the disciplinary hearing, and made a part of the record.

Rule 11. Letter of caution; public reprimand.

(a) If the inquiry discloses conduct by a judge which requires attention but is not of such a nature as to warrant a public reprimand or a recommendation by Commission that the judge be disciplined by the Supreme Court, the investigative panel may issue a letter of caution to the judge. No letter of caution may be issued after a disciplinary proceeding has been initiated pursuant to Rule 12.

(b) If, after completion of the formal investigation, the investigative panel determines that probable cause exists that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but such misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court, the investigative panel may, in the name of the Commission, issue a public reprimand to the judge and may require that the judge follow a corrective course of action. Before issuing a public reprimand to a judge, the Commission shall cause a copy of the proposed reprimand to be served on the judge, who shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12.

Rule 12. Initiation of disciplinary proceedings.

If, after completion of the formal investigation, the investigative panel determines, by the affirmative vote of not less than five (5) members, that probable cause exists that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice and that such conduct, if proven, would warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court, or that a judge is temporarily incapacitated or is suffering from an incapacity which is, or is likely to become, permanent, it shall initiate disciplinary proceedings by the filing, at the Commission offices, a Statement of Charges alleging the charge or charges. The Statement of Charges shall identify the complainant and state the charge or charges in plain and concise language and in sufficient detail to give fair and adequate notice of the nature of the alleged conduct or incapacity. The Statement of Charges shall be entitled "BEFORE THE JUDICIAL STANDARDS COMMISSION, Inquiry Concerning a Judge No. ____." A copy of the Statement of Charges shall be personally served upon the respondent judge by the Chairperson, the Executive Director, the Commission's Investigator, or by some person of suitable age and discretion designated by the Commission. If, after reasonable efforts to do so, personal service upon the respondent judge cannot be effected, service may be made by registered or certified mail with a delivery receipt, and proof of service in accordance with G.S. 1-75.10(4) shall be filed with the Commission. Service of a copy of the Statement of Charges shall constitute notice to the respondent judge of the initiation of disciplinary proceedings.

Rule 13. Answer.

Unless the time is extended by order of the Commission, the respondent judge shall file at the Commission offices, within twenty (20) days after service of the Statement of Charges, a written original and 10 copies of an Answer, which shall be verified. The Statement of Charges and Answer shall constitute the pleadings. No further pleadings may be filed, and no motions may be filed against any of the pleadings. The assertion of a mental or physical condition as a defense by the respondent judge shall constitute a waiver of medical privilege for the purpose of the Commission proceeding.

Failure to answer the Statement of Charges shall constitute an admission of the factual allegations contained in the Statement of Charges.

Rule 14. Ex Parte contacts.

After the filing of a Statement of Charges and disciplinary proceedings by the Commission, members of the Commission shall not engage in ex parte communications regarding the matter with the respondent judge, counsel for the respondent judge, Commission counsel, or any witness, except that Commission members may communicate with Commission staff and others with respect to procedural and administrative matters as may be required to perform their duties in accordance with these rules.

Rule 15. Discovery.

(a) Upon written demand after the time for filing an Answer has expired, Commission Counsel and respondent judge will each disclose to the other, within 20 days after such demand, the following:

(1) the name and address of each witness the party expects to offer at the disciplinary hearing;

(2) a brief summary of the expected testimony of each witness;

(3) copies of any written statement and a transcript of any electronically recorded statement made by any person the party anticipates calling as a witness;

(4) copies of documentary evidence which may be offered;

(b) Failure to disclose the name of any witness, or to provide any material required to be disclosed by section (a) may result in the exclusion of the testimony of such witness or the documentary evidence which was not provided.

(c) Commission Counsel shall provide the respondent judge with any exculpatory evidence of which he or she is aware and which is relevant to the allegations of the complaint.

(d) Both Commission Counsel and respondent judge shall have a continuing duty to supplement information required to be exchanged under this rule.

(e) The taking of depositions, serving of requests for admission, and other discovery procedures authorized by the Rules of Civil Procedure, shall be permitted only by stipulation of the parties or by order of the Commission Chairperson for good cause shown, and in such manner and upon such conditions as the Chairperson may prescribe.

(f) Disputes concerning discovery shall be determined by the Chairperson, whose decision may not be appealed prior to the conclusion of the disciplinary hearing and the entry of a recommendation for discipline or other final order by the Commission.

(g) Unless the time is extended by order of the Commission, all discovery shall be completed within 60 days of the filing of the answer.

Rule 16. Amendments to notice or answer.

At any time prior to the conclusion of the disciplinary hearing, the hearing panel may allow or require amendments to the Statement of Charges or to the Answer. The Statement of Charges may be amended to conform to the proof or to set forth additional facts, whether occurring before or after the commencement of the disciplinary hearing. In the event of an amendment setting forth additional facts, the respondent judge shall be given a reasonable time to answer the amendment and to prepare and present his or her defense to the matters charged thereby.

Rule 17. Disciplinary hearing.

Upon the filing of an Answer, or upon the expiration of the time allowed for its filing, the hearing panel shall order a disciplinary hearing before it upon the charges contained in the Statement of Charges. The disciplinary hearing shall be held no sooner than 60 days after filing of the Answer or, if no Answer is filed, 60 days after the expiration of time allowed for its filing, unless the judge consents to an earlier disciplinary hearing. The Commission shall serve a notice of the disciplinary hearing upon the respondent judge in the same manner as service of the Statement of Charges under Rule 12.

Upon the date set for the disciplinary hearing, such disciplinary hearing shall proceed whether or not the respondent judge has filed an Answer, and whether or not he or she appears in person or through counsel. At least six members, or alternates, shall be present continually during the presentation of evidence at the disciplinary hearing.

Commission Counsel, or other counsel appointed by the Commission for that purpose, shall present evidence in support of the charges alleged in the Statement of Charges. Commission counsel may call the respondent judge as a witness.

The disciplinary hearing shall be recorded verbatim in accordance with the provisions of Rule 10.

Rule 18. Rights of respondent; burden of proof.

The respondent judge shall have the right to representation by counsel and the opportunity to defend against the charges by the introduction of evidence, examination and cross-examination of witnesses and to address the hearing panel in argument at the conclusion of the disciplinary hearing. The respondent judge shall also have the right to the issuance of subpoenas to compel the attendance of witnesses or the production of documents and other evidentiary material.

Upon the entry of an appearance by counsel for the respondent judge, a copy of any notices, pleadings, or other written communications sent to the respondent judge shall be furnished to such counsel by the Executive Director.

Commission Counsel shall have the burden of proving the existence of grounds for a recommendation of discipline by clear, cogent and convincing evidence, as that term is defined by the Supreme Court.

Rule 19. Witnesses; oaths; subpoenas.

Every witness who testifies before the hearing panel at a disciplinary hearing shall be required to declare, by oath or affirmation, to testify truthfully. The oath or affirmation may be administered by any member of the Commission.

A subpoena to compel the attendance of a witness at a disciplinary hearing before the Commission, or a subpoena for the production of documentary evidence, shall be issued in the name of the State upon request of any party, and shall be signed by a member of the Commission, by the Executive Director, or by Commission Counsel. A subpoena shall be served, without fee, by any officer authorized to serve a subpoena pursuant to the provisions of G.S. 1A-1, Rule 45(e).

Witnesses shall be reimbursed in the manner provided in civil cases in the General Court of Justice, and their expenses shall be borne by the party calling them unless, when mental or physical disability of the judge is in issue, in which case the Commission shall bear the reasonable expenses of the witnesses whose testimony is related to the disability. Vouchers authorizing disbursements by the Commission for witnesses shall be signed by the Chairperson or Executive Director.

Rule 20. Rules of evidence.

Except as otherwise provided in these rules, the Rules of Evidence as set forth in Chapter 8C of the North Carolina General Statutes shall apply in all public proceedings under these rules. Rulings on evidentiary matters shall be made by the Chairperson, or by member presiding in the absence of the Chairperson.

Rule 21. Medical examination.

When the mental or physical condition or health of the respondent judge is in issue, a denial of the alleged condition shall constitute a waiver of medical privilege for the purpose of the Commission proceeding, and the respondent judge shall be required to produce, upon request of Commission Counsel, his or her medical records relating to such condition. The respondent judge shall also be deemed to have consented to a physical or mental examination by a qualified licensed physician or physicians designated by the Commission. A copy of the report of such examination shall be provided to the respondent judge and to the Commission. The examining physician or physicians shall receive the fee of an expert witness, to be set by the Commission.

Rule 22. Stipulations.

At any time prior to the conclusion of a disciplinary hearing, the respondent judge may stipulate to any or all of the allegations of the Statement of Charges in exchange for a stated disposition, which may include a stated recommendation to the Supreme Court for discipline. The stipulation shall be in writing and shall set forth all material facts relating to the proceeding and the conduct of respondent. The stipulation shall be signed by the respondent judge, his or her counsel, and by Commission Counsel. The stipulation shall be submitted to the hearing panel, which shall either approve the stipulation or reject it. If the stipulation provides for a stated recommendation for discipline, it must be approved by the affirmative vote of not less than five members of the hearing panel. If the stipulation is rejected by the hearing panel, it shall be deemed withdrawn and will not be considered in any proceedings before, or deliberations of, the hearing panel. If the hearing panel approves the stipulation, it shall prepare a written recommendation to the Supreme Court consistent therewith and transmit such recommendation in accordance with the provisions of Rules 24 and 25.

Rule 23. Contempt powers.

The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process of the Commission. See G.S. 7A-379(f) (proposed).

Rule 24. Procedure following disciplinary hearing.

At the conclusion of the disciplinary hearing, the hearing panel shall deliberate and determine whether to dismiss the proceeding or to file a recommendation with the Supreme Court. In all cases, the Executive Director shall notify the respondent judge in writing of the decision of the hearing panel within 60 days after the conclusion of the disciplinary hearing, unless the time is extended by order of the Chairperson.

If the hearing panel reaches a decision to recommend the censure, suspension or removal of a judge, the Executive Director shall prepare a proposed record of the proceedings and a written decision setting forth the hearing panel's findings of fact, conclusions of law, and recommendation. The proposed record of the proceeding shall include a verbatim transcript of the disciplinary hearing as well as a copy of the video recording of such disciplinary hearing. Such proposed record and decision shall be served upon the respondent judge and his or her counsel, if any, in the same manner as service of the complaint under Rule 12.

Rule 25. Transmittal of record to the Supreme Court.

Unless the respondent judge files objections to the proposed record, or a proposed alternative record, within 10 days after the proposed record and the recommendation of the hearing panel have been served upon him or her, the proposed record shall constitute the official record. If the respondent judge files objections or a proposed alternative record, the Commission Chairperson shall send written notice to Commission Counsel and to the respondent judge and his or her counsel, setting a time and place for a hearing to settle the record, and the record as settled by the Commission Chairperson shall be the official record.

Within 10 days after the official record has been settled, the Executive Director shall certify the record and decision of the Commission and file it with the Clerk of the Supreme Court. The Executive Director shall concurrently

serve upon the respondent judge, in the same manner as service of the complaint under Rule 12, a notice of the filing of such record and decision, specifying the date upon which it was filed in the Supreme Court. The Executive Director shall also transmit to the respondent judge copies of any changes to the official record occurring as a result of the settlement of the record.

Rule 26. Proceedings in the Supreme Court.

Proceedings in the Supreme Court shall be as prescribed by Supreme Court Rule. See G.S. 7A-33.

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CODE OF JUDICIAL CONDUCT

Canon 3. A judge should perform the duties of the judge's office impartially and diligently.

CASE NOTES

Recusal Not Required. —

In a guest's personal injury claims against a motor speedway and a concrete manufacturer, when the ex parte communications were of an entirely administrative nature, concerning only the timing and order of the dozen or more of the consolidated cases still to be tried, the guest failed to show that the communications constituted bias, prejudice or interest on the part of the judge under N.C. Code Jud. Conduct 3. Baker v. Charlotte Motor Speedway, Inc., — N.C. App. —, 636 S.E.2d 829, 2006 N.C. App. LEXIS 2306 (2006).

Although an attorney challenged the propriety of a trial court imposing sanctions against him under G.S. 1A-1-11 and the process by which the sanctions were imposed under N.C. Code Jud. Conduct 3(C)(1)(a), he submitted no affidavits providing evidence of the judge's personal bias, prejudice, or interest, but instead he argued that the judge's annoyance with his disruption of settlement proceedings warranted recusal; the attorney failed to demonstrate that his motion for recusal should have been granted. Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Canon 5. A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.

CASE NOTES

Expressing Personal Opinions. — Although an attorney challenged the propriety of a trial court imposing sanctions against him, he provided no authority to support his contention that the judge, by expressing personal opinions regarding the case during a hearing, violated N.C. Code Jud. Conduct 5(E) by improperly assuming the role of a mediator, and therefore was stripped of the authority to impose sanctions. Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR

With amendments effective March 8, 2007.

Subchapter 1A. Organization of the North Carolina State Bar

Section .0700. Standing Committees of the Council

Rule
A.0701. Standing committees and boards.

Subchapter 1B. Discipline and Disability Rules

Section .0100. Discipline and Disability of Attorneys

B.0128. Trust accounts; Audit.

Subchapter 1D. Rules of the Standing Committees of the North Carolina State Bar

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D.0606. Term of office and succession.
D.0614. Reserved.

Section .0700. Procedures for Fee Dispute Resolution

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D.0703. Coordinator of fee dispute resolution.
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Section .0900. Procedures for the Administrative Committee

D.0903. Suspension for non-payment of membership fee, late fee, client security fund assessment, or assessed costs, or failure to file certificate of insurance coverage or *Pro Hac Vice* Registration Statement
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Section .1300. Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts (IOLTA)

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D.1302. Jurisdiction: Authority.
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Section .1500. Rules Governing the Administration of the Continuing Legal Education Program

D.1501. Scope, purpose and definitions.

Section .1600. Regulations Governing the Administration of the Continuing Legal Education Program

D.1602. General course requirements.
D.1605. Computation of credit.

Section .1700. The Plan of Legal Specialization

D.1716. Powers and duties of the board.

Section .1800. Hearing and Appeal Rules of the Board of Legal Specialization

D.1801. Reconsideration of applications, failure of written examinations, and appeals.

Section .2200. Certification Standards for the Bankruptcy Law Specialty

D.2205. Standards for certification as a specialist in bankruptcy law.

Subchapter 1G. The Plan for Certification of Paralegals

Section .0100. The Plan for Certification of Paralegals

G.0105. Appointment of Members; When; Removal.
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G.0122. Right to Review and Appeal to Council.

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SUBCHAPTER 1A. ORGANIZATION OF THE NORTH CAROLINA STATE BAR

SECTION .0700. STANDING COMMITTEES OF THE COUNCIL

A.0701. Standing committees and boards.

(a) *Standing Committees.* Promptly after his or her election, the president shall appoint members to the standing committees identified below to serve for one year beginning January 1 of the year succeeding his or her election. Members of the committees need not be councilors, except to the extent expressly required by these rules, and may include non-lawyers. Unless otherwise directed by resolution of the council, all members of a standing committee, whether councilors or non-councilors, shall be entitled to vote as members of the standing committee or any subcommittee or panel thereof.

(1) *Executive Committee.* It shall be the duty of the Executive Committee to receive reports and recommendations from standing committees, boards, and special committees; to nominate individuals for appointments made by the council; to make long range plans for the State Bar; and to perform such other duties and consider such other matters as the council or the president may designate.

(2) *Ethics Committee.* It shall be the duty of the Ethics Committee to study the rules of professional responsibility currently in effect; to make recommendations to the council for such amendment to the rules as the committee deems necessary or appropriate; to study and respond to questions that arise concerning the meaning and application of the rules of professional conduct; to issue opinions in response to questions of legal ethics in accordance with the provisions of Section .0100 of Subchapter 1D of these rules; to consider issues concerning the regulation of lawyers' trust accounts; and to perform such other duties and consider such other matters as the council or the president may designate.

(3) *Grievance Committee.* It shall be the duty of the Grievance Committee to exercise the disciplinary and disability functions and responsibilites set forth in Section .0100 of Subchapter 1B of these rules and to make recommendations to the council for such amendments to that section as the committee deems necessary or appropriate. The Grievance Committee shall sit in panels as assigned by the president. Each panel shall have at least ten members. Two members of each panel shall be non-lawyers, one member may be a lawyer who is not a member of the council, and the remaining members of each panel shall be councilors of the North Carolina State Bar. A quorum of a panel shall be five members serving at a particular time. Each panel shall exercise the powers and discharge the duties of the Grievance Committee with respect to the grievances and other matters referred to it by the chairperson of the Grievance Committee. Each panel member shall be furnished a brief description of all matters referred to other panels (and such other available information as he or she may request) and be given a reasonable opportunity to provide comments to such other panels. Each panel's decision respecting the grievances and other matters assigned to it will be deemed final action of the Grievance Committee, unless the full committee at its next meeting, by a majority vote of those present, elects to review a panel decision and upon further consideration decides to reverse or modify that decision. There will be no other right of appeal to the committee as a whole or to another panel. The president shall designate a vice-chairperson to preside over, and oversee the functions of, each panel. The vice-chairpersons shall have such other powers as may be delegated to them by the chairperson of the Grievance Committee. The Grievance

Committee shall perform such other duties and consider such other matters as the council or the president may designate.

(4) *Authorized Practice Committee.* It shall be the duty of the Authorized Practice Committee to respond to or investigate inquiries and complaints about conduct that may constitute the unauthorized practice of law in accordance with the provisions of Section .0200 of Subchapter 1D of these rules; to study and advise the council on the appropriate and lawful use and regulation of legal assistants, paralegals and other lay person in connection with the provision of law-related services; to the study and advise the council on the regulation of professional organizations; and to perform such other duties and consider such other matters as the council or the president may designate.

(5) *Administrative Committee.* It shall be the duty of the Administrative Committee to study and make recommendations on policies concerning the administration of the State Bar, including the administration of the State Bar's facilities, automation, personnel, retirement plan, publications, and district bars; to oversee the membership functions of the State Bar, including the collection of dues, the suspension of members for failure to pay dues and other fees, and the transfer of members to active or inactive status in accordance with the provisions of Sections .0900 and .1000 of Subchapter 1D of these rules; and to perform such other duties and consider such other matters as the the council or the president may designate. The committee may establish a Publications Board to oversee the regular publications of the State Bar.

(6) *Justice System Committee.* It shall be the duty of the Justice System Committee to assist the council in identifying and advancing the appropriate role of the State Bar in connection with initiatives, programs, legislation and other actions intended to improve access to justice, simplify the law and judicial procedures, and enhance the justice system and the public's confidence in that system; to consider means and methods of enhancing the degree of professionalism exhibited in the practice and conduct of the lawyers of this State; and to perform such other duties and consider such other matters as the council or the president may designate.

(7) *Attorney Client Assistance Committee.* It shall be the duty of the Attorney Client Assistance Committee to develop and oversee policies and programs to help clients and lawyers resolve difficulties or disputes, including fee disputes, using means other than the formal grievance or civil litigation processes; to establish and implement a disaster response plan, in accordance with the provisions of Section .0300 of Subchapter 1D of these rules, to assist victims of disasters in obtaining legal representation and to prevent the improper solicitation of victims by lawyers; and to perform such other duties and consider such other matters as the council or the president may designate.

(8) *Legal Assistance for Military Personnel (LAMP) Committee.* It shall be the duty of the LAMP Committee to serve as liaison for lawyers in the military service in this State; to improve legal services to military personnel and dependents stationed in this State; and to perform such other duties and consider such other matters as the council or the president may designate.

(9) *Finance and Audit Committee.* It shall be the duty of the Finance and Audit Committee to superintend annually the preparation of the State Bar's operational budget and to make recommendations to the Executive Committee concerning that budget and the budgets for the boards listed in subsection (b) below; to make recommendations to the Executive Committee regarding the State Bar's financial policies; to examine the financial records of the State Bar at each regular meeting of the council and report its findings to the Executive Committee; to recommend to the Executive Committee annually the retention of an independent auditor; to direct the work of the independent auditor in

accordance with the policies and procedures adopted by the council and the state auditor; and to review the results of the annual audit and make recommendations concerning the audit to the Executive Committee.

(b) *Boards.* The council of the State Bar shall make appointments to the following boards upon the recommendation of the Executive Committee. The boards are constituents of the North Carolina State Bar and, as standing committees of the State Bar, are subject to the authority of the council.

(1) *Interest on Lawyers' Trust Accounts (IOLTA) Board of Trustees.* The IOLTA Board shall be constituted in accordance with and shall carry out the provisions of the Plan for Disposition of Funds Received by the North Carolina State Bar from Interest on Trust Accounts set forth in Section .1300 of Subchapter 1D of these rules.

(2) *Board of Legal Specialization.* The Board of Legal Specialization shall be constituted in accordance with and shall carry out the provisions of the Plan of Legal Specialization set forth in Section .1700 of Subchapter 1D of these rules.

(3) *Client Security Fund Board of Trustees.* The Client Security Fund Board of Trustees shall be constituted in accordance with and shall carry out the provisions of the Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar set forth in Section .1400 of Subchapter 1D of these rules.

(4) *Board of Continuing Legal Education (CLE).* The Board of Continuing Legal Education shall be constituted in accordance with and shall carry out the provisions of the Continuing Legal Education Rules and Regulations of the North Carolina State Bar set forth in Sections .1500 and .1600 of Subchapter 1D of these rules.

(5) *Lawyer Assistance Program Board.* The Lawyer Assistance Program Board shall be constituted in accordance with and shall carry out the provisions of the Rules Governing the Lawyer Assistance Program of the North Carolina State Bar set forth in Section .0600 of Subchapter 1D of these rules.

History Note: Statutory Authority G.S. 84-22; G.S. 84-23, Readopted effective December 8, 1994; Amended effective June 12, 1996; Amended effective February 3, 2000; Amended effective October 6, 2004; Amended effective November 16, 2006; Amended effective March 8, 2007.

SUBCHAPTER 1B. DISCIPLINE AND DISABILITY RULES

SECTION .0100. DISCIPLINE AND DISABILITY OF ATTORNEYS

B.0128. Trust accounts; Audit.

(a) For reasonable cause, the chairperson of the Grievance Committee is empowered to issue an investigative subpoena to a member compelling the production of any records required to be kept relative to the handling of client funds and property by the Rules of Professional Conduct for inspection, copying, or audit by the counsel or any auditor appointed by the counsel. For the purposes of this rule, circumstances that constitute reasonable cause, include, but are not limited to:

(1) any sworn statement of grievance received by the North Carolina State Bar alleging facts which, if true, would constitute misconduct in the handling of a client's funds or property;

(2) any facts coming to the attention of the North Carolina State Bar, whether through random review as contemplated by Rule .0128(b) below or otherwise, which if true, would constitute a probable violation of any provision

of the Rules of Professional Conduct concerning the handling of client funds or property;

(3) two or more grievances received by the North Carolina State Bar over a twelve month period alleging facts which, if true, would indicate misconduct for neglect of a client matter or failure to communicate with a client;

(4) any failure to respond to any notices issued by the North Carolina State Bar with regard to a grievance or a fee dispute;

(5) any information received by the North Carolina State Bar which, if true, would constitute a failure to file any federal, state, or local tax return or pay an federal, state, or local tax obligation; or

(6) any finding of probable cause, indictment, or conviction relative to a criminal charge involving moral turpitude.

The grounds supporting the issuance of any such subpoena will be set forth upon the face of the subpoena.

(b) The chairperson of the Grievance Committee may randomly issue investigative subpoenas to members compelling the production of any records required to be kept relative to the handling of client funds or property by the Rules of Professional Conduct for inspection by the counsel or any auditor appointed by the counsel to determine compliance with the Rules of Professional Conduct. Any such subpoena will disclose upon its face its random character and contain a verification of the secretary that it was randomly issued. No member will be subject to random selection under this section more than once in three years. The auditor may report any violation of the Rules of Professional Conduct discovered during random audit to the Grievance Committee for investigation. The auditor may allow the attorney a reasonable amount of time to correct any procedural violation in lieu of reporting the matter to the Grievance Committee. The auditor shall have authority under the original subpoena for random audit to compel the production of any documents necessary to determine whether the attorney has corrected any violation identified during the audit.

(c) No subpoena issued pursuant to this rule may compel production within five days of service.

(d) The rules of evidence applicable in the superior courts of the state will govern the use of any material subpoenaed pursuant to this rule in any hearing before the commission.

(e) No assertion of attorney-client privilege or confidentiality will prevent an inspection or audit of a trust account as provided in this rule.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994; Amended November 16, 2006.

SUBCHAPTER 1D. RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .0600. RULES GOVERNING THE LAWYER ASSISTANCE PROGRAM

D.0604. Size of board.

The board shall have nine members. Three of the members shall be councilors of the North Carolina State Bar at the time of appointment; three of the members shall be non-lawyers or lawyers with experience and training in the fields of mental health, substance abuse or addiction; and three of the

members shall be lawyers who are currently volunteers to the lawyer assistance program. In addition, the board may have the dean of a law school in North Carolina, or the dean's designee, appointed by the council as an ex officio member. No member of the Grievance Committee shall be a member of the board.

History Note: Adopted February 3, 2000; Amended November 16, 2006.

D.0606. Term of office and succession.

The members of the board shall be divided into three classes of equal size to serve in the first instance for terms expiring one, two and three years, respectively, after the first quarterly meeting of the council following creation of the board. Of the initial board, three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer to the lawyer assistance program) shall be appointed to terms of one year; three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer) shall be appointed to terms of two years; and three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer) shall be appointed to terms of two years; and three members (one councilor, one mental health, substance abuse or addiction professional, and one lawyer-volunteer) shall be appointed to terms of three years. Thereafter, the successors in each class of board members shall be appointed to serve for terms of three years. No member shall serve more than two consecutive three-year terms, in addition to service prior to the beginning of a full three-year term, without having been off the board for at least three years. Members of the board serving ex officio shall serve one-year terms and may serve up to three consecutive terms.

History Note: Adopted February 3, 2000; Amended November 16, 2006.

D.0614. Reserved.

History Note: Statutory Authority G.S. 84-22; G.S. 84-23; G.S. 84-28, Readopted effective December 8, 1994; Amended effective February 3, 2000; Repealed and reserved November 16, 2006.

SECTION .0700. PROCEDURES FOR FEE DISPUTE RESOLUTION

D.0701. Purpose and implementation.

The purpose of the Fee Dispute Resolution Program shall be to assist lawyers and clients to settle disputes over fees. In doing so, the Fee Dispute Resolution Program shall assist the lawyers and clients in determining the appropriate fee for legal services rendered. The State Bar shall implement the Fee Dispute Resolution Program under the auspices of the Attorney Client Assistance Committee (the committee), which shall be offered to clients and their lawyers at no cost.

History Note: Statutory Authority G.S. 84-23, Readopted effective December 8, 1994; Amended effective February 3, 2000; Amended effective May 4, 2000; Amended effective March 8, 2007.

D.0703. Coordinator of fee dispute resolution.

The secretary-treasurer of the North Carolina State Bar shall designate a member of the staff to serve as coordinator of the Fee Dispute Resolution Program. The coordinator shall develop forms, maintain records, and provide statistics on the Fee Dispute Resolution Program. The coordinator shall also develop an annual report to the council.

History Note: Statutory Authority G.S. 84-23, Readopted effective December 8, 1994; Amended effective February 3, 2000; Amended effective May 4, 2000; Amended effective March 8, 2008.

D.0706. Processing requests for fee dispute resolution.

(a) Requests for fee dispute resolution shall be timely submitted in writing to the coordinator of fee dispute resolution addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The attorney must allow at least 30 days after the client shall have received written notice of the fee dispute resolution program before filing a lawsuit. An attorney may file a lawsuit prior to expiration of the required 30-day notice period or after the petition is filed by the client if such is necessary to preserve a claim. However, the attorney must not take any further steps to pursue the litigation until he/she complies with the provision of the fee dispute resolution rules. Clients may request fee dispute resolution at any time prior to the filing of a lawsuit. No filing fee shall be required. The request should state with clarity and brevity the facts of the fee dispute and the names and addresses of the parties. It should also state that, prior to requesting fee dispute resolution, a reasonable attempt was made to resolve the dispute by agreement, the matter has not been adjudicated, and the matter is not presently the subject of litigation. All requests for resolution of a disputed fee must be filed before the statute of limitation has run or within three years of the ending of the client/attorney relationship, whichever comes last.

(b) The coordinator of fee dispute resolution or his/her designee shall investigate the request to determine its suitability for fee dispute resolution. If it is determined that the matter is not suitable for fee dispute resolution, the coordinator shall prepare a brief written report setting forth the facts and a recommendation for dismissal. Grounds for dismissal include, but are not limited to, the following:

(1) the request is frivolous or moot;

(2) the absence of jurisdiction; or

(3) the facts as stated support the conclusion that the fee was earned and is not excessive.

The report shall be forwarded to the chairperson of the committee. If the chairperson of the Attorney Client Assistance Committee of the State Bar concurs with the recommendation, the matter shall be dismissed and the parties notified.

(c) If the chairperson disagrees with the recommendation for dismissal, an attempt to resolve the dispute will be made pursuant to Rule .0707 below or the chair may recommend review by the full committee.

History Note: Statutory Authority G.S. 84-23, Adopted May 4, 2000; Amended effective February 5, 2002; Amended effective March 8, 2007.

D.0707. Mediation proceedings.

(a) The coordinator shall assign the case to a mediator who shall conduct a mediated settlement conference. The mediator shall be responsible for reserv-

ing a place and making arrangements for the conference at a time and place convenient to all parties.

(b) The attorney against whom a request for fee dispute resolution is filed must attend the mediated settlement conference in person and may not send another representative of his or her law firm. If a party fails to attend a mediated settlement conference without good cause, the mediator may either reschedule the conference or recommend dismissal.

(c) The mediator shall at all times be in control of the conference and the procedures to be followed. The mediator may communicate privately with any participant prior to and during the conference. Any private communication with a participant shall be disclosed to all other participants at the beginning of the conference. The mediator shall define and describe the following at the beginning of the conference:

(1) the process of mediation;

(2) the differences between mediation and other forms of conflict resolution;

(3) that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;

(4) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

(5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(6) The duties and responsibilities of the mediator and the participants; and

(7) That any agreement reached will be reached by mutual consent, reduced to writing and signed by all parties.

The mediator has a duty to be impartial and advise all participants of any circumstance bearing on possible bias, prejudice, or partiality. It is the duty of the mediator timely to determine and declare that an impasse exists and that the conference should end.

History Note: Statutory Authority G.S. 84-23, Adopted May 4, 2000; Amended effective March 8, 2007.

SECTION .0900. PROCEDURES FOR THE ADMINISTRATIVE COMMITTEE

D.0903. Suspension for non-payment of membership fee, late fee, client security fund assessment, or assessed costs, or failure to file certificate of insurance coverage or *Pro Hac Vice* Registration Statement.

(a) *Notice of overdue fees, costs, certificate of insurance coverage, or Pro Hac Vice Registration Statement.*

Whenever it appears that a member has failed to comply, in a timely fashion, with the rules regarding payment of the annual membership fee, late fee, the Client Security Fund assessment, and/or any district bar annual membership fee, or that the member has failed to pay, in a timely fashion, the costs of a disciplinary, disability, reinstatement, show cause, or other proceeding of the North Carolina State Bar as required by a notice of the chairperson of the Grievance Committee, an order of the Disciplinary Hearing Commission, or a notice of the secretary or the council of the North Carolina State Bar, or that the member has failed to file, in a timely fashion, a certificate of insurance coverage as required in Rule .0204 of subchapter A of these rules, or a *pro hac vice* registration statement as required in Rule .0101 of subchapter H of these rules, the secretary shall prepare a written notice

(1) directing the member to show cause, in writing, within 30 days of the date of service of the notice why he or she should not be suspended from the practice of law, and

(2) when appropriate, demanding payment of a $30 late fee for the failure to pay the annual membership fee to the North Carolina State Bar and/or Client Security Fund assessment in a timely fashion, and/or failure to submit a certificate of insurance coverage in a timely fashion.

(b) *Service of the notice.*

The notice shall be served on the member pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and may be served by a State Bar investigator or any other person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process.

(c) *Entry of order of suspension upon failure to respond to notice to show cause.*

Whenever a member fails to respond in writing within 30 days of the service of the notice to show cause upon the member, and it appears that the member has failed to comply with the rules regarding payment of the annual membership fee, any late fees imposed pursuant to Rule .0203(b) or Rule .0204(c) of subchapter A, the Client Security Fund assessment, and/or any district bar annual membership fee, and/or it appears that the member has failed to pay any costs assessed against the member as required by a notice of the chairperson of the Grievance Committee, an order of the Disciplinary Hearing Commission, and/or a notice of the secretary or council of the North Carolina State Bar, and/or it appears that the member has failed to file a certificate of insurance coverage, and/or a *pro hac vice* registration statement, the council may enter an order suspending the member from the practice of law. The order shall be effective 30 days after proof of service on the member. A copy of the order shall be served on the member pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and may be served by a State Bar investigator or any other person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process.

(d) *Procedure upon submission of a timely response to a notice to show cause.*

(1) *Consideration by Administrative Committee.*

If a member submits a written response to a notice to show cause within 30 days of the service of the notice upon the member, the Administrative Committee shall consider the matter at its next regularly scheduled meeting. The member may personally appear at the meeting and be heard, may be represented by counsel, and may offer witnesses and documents. The counsel may appear at the meeting on behalf of the State Bar and be heard, and may offer witnesses and documents. The burden of proof shall be upon the member to show cause by clear, cogent and convincing evidence why the member should not be suspended from the practice of law for the apparent failure to comply with the rules regarding payment of the annual membership fee, late fee, Client Security Fund assessment, and/or any district bar annual membership fee, and/or the apparent failure to pay costs assessed against the member as required by a notice of the chairperson of the Grievance Committee, an order of the Disciplinary Hearing Commission, and/or a notice of the secretary or council of the North Carolina State Bar, and/or the apparent failure to file a certificate of insurance coverage and/or a *pro hac vice* registration statement.

(2) *Recommendation of Administrative Committee.*

The Administrative Committee shall determine whether the member has shown cause why the member should not be suspended. If the committee determines that the member has failed to show cause, the committee shall recommend to the council that the member be suspended.

(3) *Order of suspension.*

Upon the recommendation of the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order

shall be effective 30 days after proof of service on the member. A copy of the order shall be served on the member pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and may be served by a State Bar investigator or any other person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process.

(e) *Late tender of membership fees, assessed costs, or certificate of insurance coverage.*

If a member tenders to the North Carolina State Bar the annual membership fee, the $30 late fee, Client Security Fund assessment, any district bar annual membership fee, and/or any costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar and/or overdue certificate of insurance coverage and/or the *pro hac vice* registration statement before a suspension order is entered by the council, no order of suspension will be entered.

History Note: Statutory Authority G.S. 84-23; G.S. 84-34, Readopted effective December 8, 1994; Amended December 7, 1995; Amended March 7, 1996; Amended March 5, 1998; Amended effective February 3, 2000; Amended October 1, 2003; Amended March 2, 2006; Amended November 16, 2006.

D.0904. Compliance after suspension for failure to pay fees or assessed costs, or to file certificate of insurance coverage or *pro hac vice* registration statement.

(a) *Reinstatement within 30 days of service of suspension order.*

A member who receives an order of suspension for nonpayment of the annual membership fee, late fee, Client Security Fund assessment, district bar annual membership fee, and/or costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar, and/or failure to file a certificate of insurance coverage as required by Rule .0204 of subchapter A, may preclude the order from becoming effective by submitting a written request and satisfactory showing within 30 days after service of the suspension order of certification of insurance coverage, registration of *pro hac vice* admission, and/or payment of the membership fee, late fee, Client Security Fund assessment, district bar annual membership fee, assessed costs, and the costs of the suspension and reinstatement procedure, including the costs of service. Such member shall not be required to file a formal reinstatement petition or pay a $125 reinstatement fee.

(b) *Reinstatement more than 30 days after service of suspension order.*

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for nonpayment of the membership fee, late fee, Client Security Fund assessment, district bar annual membership fee, and/or costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar and/or failure to file a certificate of insurance coverage, and/or file a *pro hac vice* registration statement, may petition the council for an order of reinstatement.

(c) *Contents of reinstatement petition.*

The petition shall set out facts showing the following:

(1) that the member has provided all information requested in a form to be prescribed by the council and has signed the form under oath;

(2) unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter, that the member satisfied the minimum continuing legal education (CLE) requirements, as set forth in Rule .1518 of this subchapter, for the calendar year immediately preceding the year in which

the member was suspended (the "subject year"), including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year and if two or more years have elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, that within one year prior to filing the petition, the member completed 15 hours of CLE accredited pursuant to Rule .1519 of this subchapter, including at least 3 hours of instruction in the areas of professional responsibility and/or professionalism;

(3) that the member has the moral qualifications, competency and learning in the law required for admission to practice law in the state of North Carolina, and that the member's resumption of the practice of law will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest;

(4) that the member has paid all of the following:

(A) a $125.00 reinstatement fee;

(B) all membership fees, Client Security Fund assessments, and late fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;

(C) all district bar annual membership fees owed at the time of suspension;

(D) all attendee fees, fines and penalties owed the Board of Continuing Legal Education at the time of suspension and, attendee fees for CLE courses taken to satisfy the requirements of Rule .0904(c)(2) above;

(E) any costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar; and

(F) all costs incurred by the North Carolina State Bar in suspending the member, including the costs of service, and in investigating and processing the application for reinstatement; and

(5) that the member has filed a certificate of insurance coverage for the current year; and

(6) that the member has filed any overdue *pro hac vice* registration statement for which the member was responsible.

(d) *Procedure for review of reinstatement petition.*

The Procedure for review of reinstatement petition shall be as set forth in Rule .0902(c)-(f) above.

History Note: Statutory Authority G.S. 84-16; G.S. 84-23; G.S. 84-34, Readopted Effective December 8, 1994; Amended July 21, 1995; Amended March 7, 1996; Amended March 5, 1998; Amended effective February 27, 2003; Amended October 1, 2003; Amended March 2, 2006; Amended November 16, 2006.

SECTION .1300. RULES GOVERNING THE ADMINISTRATION OF THE PLAN FOR INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

D.1302. Jurisdiction: Authority.

The Board of Trustees of the North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA) is created as a standing committee by the North Carolina State Bar Council pursuant to Chapter 84 of the North Carolina General Statutes for the disposition of funds received by the North Carolina State Bar from interest on trust accounts or from other sources intended for the provision of legal services to the indigent and the improvement of the administration of justice.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994; Amended effective March 8, 2007.

D.1312. Source of funds.

Funding for the program carried out by the board shall come from funds remitted from depository institutions by reason of interest earned on trust accounts established by lawyers pursuant to Rule 10.3 of the Rules of Professional Conduct, voluntary contributions from lawyers, and interest, dividends or other proceeds earned on the board's funds from investments or from other sources intended for the provision of legal services to the indigent and the improvement of the administration of justice.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994; Amended effective March 8, 2007.

SECTION .1500. RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

D.1501. Scope, purpose and definitions.

(a) *Scope.*

Except as provided herein, these rules shall apply to every active member licensed by the North Carolina State Bar.

(b) *Purpose.*

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining attorneys who do not comply with such rules. The Revised Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

At a time when all aspects of life and society are changing rapidly or becoming subject to pressures brought about by change, laws and legal principles are also in transition (through additions to the body of law, modifications and amendments) and are increasing in complexity. One cannot render competent legal services without continuous education and training.

The same changes and complexities, as well as the economic orientation of society, result in confusion about the ethical requirements concerning the practice of law and the relationships it creates. The data accumulated in the discipline program of the North Carolina State Bar argue persuasively for the establishment of a formal program for continuing and intensive training in professional responsibility and legal ethics.

It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients' affairs while avoiding the ethical problems which can be caused by disorganization.

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these minimum continuing legal education requirements is the

same as the purpose of the Revised Rules of Professional Conduct themselves-to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

(c) Definitions

(1) "Accredited sponsor" shall mean an organization whose entire continuing legal education program has been accredited by the Board of Continuing Legal Education.

(2) "Active member" shall include any person who is licensed to practice law in the state of North Carolina and who is an active member of the North Carolina State Bar.

(3) "Administrative Committee" shall mean the Administrative Committee of the North Carolina State Bar.

(4) "Approved activity" shall mean a specific, individual legal education activity presented by an accredited sponsor or presented by other than an accredited sponsor if such activity is approved as a legal education activity under these rules by the Board of Continuing Legal Education.

(5) "Board" means the Board of Continuing Legal Education created by these rules.

(6) "Continuing legal education" or "CLE" is any legal, judicial or other educational activity accredited by the board. Generally, CLE will include educational activities designed principally to maintain or advance the professional competence of lawyers and/or to expand an appreciation and understanding of the professional responsibilities of lawyers.

(7) "Council" shall mean the North Carolina State Bar Council.

(8) "Credit hour" means an increment of time of 60 minutes which may be divided into segments of 30 minutes or 15 minutes, but no smaller.

(9) "Inactive member" shall mean a member of the North Carolina State Bar who is on inactive status.

(10) "In-house continuing legal education" shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, or similar entities primarily for the education of their members. The board may exempt from this definition those programs which it finds

(A) to be conducted by public or quasi-public organizations or associations for the education of their employees or members;

(B) to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law.

(11) A "newly admitted active member" is one who becomes an active member of the North Carolina State Bar for the first time, has been reinstated, or has changed from inactive to active status.

(12) "Participatory CLE" shall mean courses or segments of courses that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.

(13) "Professional responsibility" shall mean those courses or segments of courses devoted to a) the substance, the underlying rationale, and the practical application of the Revised Rules of Professional Conduct; b) the professional obligations of the attorney to the client, the court, the public, and other lawyers; and c) the effects of substance abuse and chemical dependency, or debilitating mental condition on a lawyer's professional responsibilities. This definition shall be interpreted consistent with the provisions of Rule .1501(c)(4) or (6) above.

(14) "Professionalism" courses are courses or segments of courses devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct which tran-

scend the requirements of the Revised Rules of Professional Conduct. Such courses address principles of competence and dedication to the service of clients, civility, improvement of the justice system, advancement of the rule of law, and service to the community.

(15) "Rules" shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina (Section .1500 of this subchapter).

(16) "Sponsor" is any person or entity presenting or offering to present one or more continuing legal education programs, whether or not an accredited sponsor.

(17) "Year" shall mean calendar year.

History Note: Authority — Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted effective December 8, 1994; Amended effective March 6, 1997; Amended effective December 30, 1998; Amended effective March 3, 1999; Amended effective June 7, 2001; March 3, 2005; Amended effective March 8, 2007.

SECTION .1600. REGULATIONS GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

D.1602. General course requirements.

(a) *Professional Responsibility Courses on Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions.* Accredited professional responsibility courses on substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such courses may also include (1) education on the prevention, detection, treatment and etiology of substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations.

(b) *Law School Courses.* Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved activities. Computation of CLE credit for such courses shall be as prescribed in Rule .1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.

(c) *Law Practice Management Courses.* A CLE accredited course on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited course on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and ticket systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management course may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) *Skills and Training Courses.* A course that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A course that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use computer hardware, non-legal software, or office equipment; public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) *Activities That Shall Not Be Accredited.* CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

(1) courses within the normal college curriculum such as English, history, social studies, and psychology;

(2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(c);

(3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from courses dealing with development of law office procedures and management designed to raise the level of service provided to clients).

(f) *Service to the Profession Training.* A course or segment of a course presented by a bar organization may be granted up to three hours of credit if the bar organization's course trains volunteer attorneys in service to the profession, and if such course or course segment meets the requirements of Rule .1519(2)-(7) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such course or course segment.

(g) *In-House CLE and Self-Study.* No approval will be provided for in-house CLE or self-study by attorneys, except those programs exempted by the board under Rule .1501(c)(10) of this subchapter or as provided in Rule .1604(e) of this subchapter.

(h) *Bar Review/Refresher Course.* Courses designed to review or refresh recent law school graduates or attorneys in preparation for any bar exam shall not be approved for CLE credit.

History Note: Authority — Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711; Readopted effective December 8, 1994; Amended effective March 6, 1997; Amended effective March 5, 1998; Amended effective March 3, 1999; Amended effective March 1, 2001; Amended effective June 7, 2001; Amended effective March 3, 2005; Amended effective March 2, 2006; Amended effective March 8, 2007.

D.1605. Computation of credit.

(a) *Computation formula.* CLE and professional responsibility hours shall be computed by the following formula:

$$\frac{\text{sum of the total minutes of actual instruction}}{60} = \text{Total Hours}$$

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) *Actual instruction.* Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

(1) introductory remarks;

(2) breaks;

(3) business meetings;

(4) speeches in connection with banquets or other events which are primarily social in nature;

(5) question and answer sessions at a ratio in excess of 15 minutes per CLE hour and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.

(c) *Teaching.* As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education activity or a continuing paralegal education activity held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three hours of credit for each thirty minutes of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.

(d) *Teaching law courses.*

(1) *Law School Courses.* If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching courses at an ABA accredited law school. A member may also earn CLE credit by teaching courses at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.

(2) *Courses at Paralegal Schools or Programs.* Effective January 1, 2006, a member may earn CLE credit by teaching paralegal or substantive law courses at an ABA approved paralegal school or program.

(3) *Credit Hours.* Credit for teaching courses described in Rule .1605(d)(1) and (2) above may be earned without regard to whether the course is taught on-line or in a classroom. Credit will be calculated according to the following formula:

> 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or
>
> 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution.
>
> (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).

(4) *Other Requirements.* The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.

History Note: Authority — Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711, Readopted Effective December 8, 1994; Amended effective March 3, 1999; Amended October 1, 2003; Amended November 16, 2006.

SECTION .1700. THE PLAN OF LEGAL SPECIALIZATION

D.1716. Powers and duties of the board.

Subject to the general jurisdiction of the council and the North Carolina Supreme Court, the board shall have jurisdiction of all matters pertaining to regulation of certification of specialists in the practice of law and shall have the power and duty

(1) to administer the plan;

(2) subject to the approval of the council and the Supreme Court, to designate areas in which certificates of specialty may be granted and define the scope and limits of such specialities and to provide procedures for the achievement of these purposes;

(3) to appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter identified;

(4) to make and publish standards for the certification of specialists, upon the board's own initiative or upon consideration of recommendations made by the specialty committees, such standards to be designed to produce a uniform level of competence among the various specialties in accordance with the nature of the specialties;

(5) to certify specialists or deny, suspend or revoke the certification of specialists upon the board's own initiative, upon recommendations made by the specialty committees or upon requests for review of recommendations made by the specialty committees;

(6) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;

(7) to propose and request the council to make amendments to this plan whenever appropriate;

(8) to cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct to the appropriate disciplinary authority;

(9) to evaluate and approve, or disapprove, any and all continuing legal education courses, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the board for the certification of specialists and in connection therewith to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the providers of continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, organizations providing continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists;

(10) to cooperate with other organizations, boards and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization including, but not limited to, utilizing appropriate and qualified organizations that are ABA accredited, to prepare and administer the written specialty examinations for specialties based predominantly on federal law;

(11) notwithstanding any conflicting provision of the certification standards for any area of specialty, to direct any of the specialty committees not to administer a specialty examination if, in the judgment of the board, there are insufficient applicants or such would otherwise not be in the best interest of the specialization program.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994; Amended November 16, 2006.

SECTION .1800. HEARING AND APPEAL RULES OF THE BOARD OF LEGAL SPECIALIZATION

D.1801. Reconsideration of applications, failure of written examinations, and appeals.

(a) *Applications incomplete and/or applicants not in compliance with standards for certification.*

(1) *Incomplete applications.* The executive director of the North Carolina State Bar Board of Legal Specialization (the board) will review every application to determine if the application is complete. The applicant will be notified of the incompleteness of his or her application. The applicant must submit the completed application within 21 days of the date of mailing of the notice. If the applicant fails to provide the required information for the application during the requisite time period, the executive director will refer the application to the specialty committee for review.

(2) *Applicant not in compliance.* The executive director shall refer to the specialty committee for review any application which appears complete on its face but which does not satisfactorily demonstrate compliance with the standards for certification in the specialty area for which certification is sought.

(3) *Specialty committee action.* The specialty committee shall review the incomplete applications and the applications not in compliance with the standards for certification. After reviewing the applications, the specialty committee shall recommend to the board the acceptance or rejection of the applications. The specialty committee shall notify the board of its recommendations in writing and the reason for any negative recommendation must be specified. The specialty committee must complete the above process within 14 days of receiving the applications.

(4) *Notification to applicant of the specialty committee's action.* The executive director shall promptly notify the applicant in writing of the specialty committee's recommendation of rejection of the application. The notification must specify the reason for the recommendation of rejection of the application. In addition, the notification shall inform the applicant of his or her right to petition the board for review of the application or request a hearing before the board.

(5) *Petition for review by the board.* Within 21 days of the mailing of the notice from the executive director that an application has been recommended for rejection by the specialty committee, the applicant may petition the board for review. The petition may be informal (e.g., by letter), but should include the date on which notice of the recommendation of rejection was received and the reasons for which the applicant believes the specialty committee's recommendation of rejection should not be accepted.

(6) *Review of petition by the board.* A three-member panel of the board, to be appointed by the chairperson of the board, shall review and take action by a majority of the panel upon the petition and notify the applicant of the board's decision. The notification shall inform the applicant of his or her right to appeal the decision to the North Carolina State Bar Council (the council) if the board's action is unfavorable to the applicant.

(7) *Request for hearing.* In lieu of a petition for review, an applicant may request a hearing before the board. The applicant shall notify the board through its executive director in writing of such request for a hearing within 21

days of the mailing of the notice regarding the specialty committee's recommendation of rejection of the application. The applicant shall set forth the grounds for the hearing before the board. In such a request, the applicant shall list the names of prospective witnesses and identify documentation and other evidence to be introduced at the hearing before the board. The applicant shall be notified of the board's decision, and if the board's decision is unfavorable to the applicant, the applicant will be notified of his or her right to appeal the board's decision to the council.

(8) *Hearing procedures.*

(A) *Notice: Time and place of hearing.* The chairperson of the board shall fix the time and place of the hearing as soon as practicable after the applicant's request for hearing is received. The applicant shall be notified of the hearing date. Such notice shall be given to the applicant at least 10 days prior to the time fixed for the hearing.

(B) *Quorum.* A panel of three members of the board, as appointed by the chairperson, shall be necessary to conduct the hearing with the majority of those in attendance necessary to decide upon the matter.

(C) *Representation by counsel and witnesses.* The applicant may be represented by counsel or represent himself or herself at such hearing. The applicant may offer witnesses and documents and may cross-examine any witness.

(D) *Written briefs.* The applicant is urged to submit a written brief (in quadruplicate) 10 days prior to the hearing to the executive director for distribution to the panel in support of his or her position. However, written briefs are not required.

(E) *Depositions.* Should the applicant or executive director desire to take a deposition prior to the board hearing of any voluntary witness who cannot attend the board hearing, such intention to take, and request to take, the deposition of a witness may be applied for in writing to the chairperson of the board together with a written consent signed by the potential witness that he or she will give a deposition for one party and a statement to the effect that the witness cannot attend the hearing along with the reason for such unavailability. The party seeking to take the deposition of a witness shall state in detail as to what the witness is expected to testify. If the chairperson is satisfied that such deposition from a possible witness will be relevant to the issue in question before the board, then the chairperson will authorize said taking of the deposition. The chairperson will also designate the executive director or a member of the specialty committee to be present at the deposition. The deposition may be taken orally or by video. Any refusal of the taking of the deposition by the chairperson shall be reviewed by the board at the request of the applicant. The cost connected with taking the deposition shall be borne by the party requesting the deposition.

(F) *Continuances.* Motions for continuance of the hearing should be made to the chairperson of the board and such motions will be granted or denied by the chairperson of the board.

(G) *Burden of proof: Preponderance of the evidence.* The panel of the board shall apply the preponderance of the evidence rule in determining whether or not to accept the application for certification. The burden of proof is upon the applicant.

(H) *Conduct of hearings: Rights of parties.*

(i) Hearings shall be reported by a certified court reporter. The applicant shall pay the costs associated with obtaining the court reporter's services for the hearing. The applicant shall pay the costs of the transcript and shall arrange for the preparation of the transcript with the court reporter. The applicant shall be taxed with all other costs of the hearing, but such costs shall not include any compensation to the members of the board before whom the

hearing is conducted. The board in its discretion may refund to the applicant all or some portion of the necessary costs incurred as a result of the hearing.

(ii) The applicant may retain counsel at all stages of the investigation and at all meetings. The applicant and his or her counsel shall have the right to attend all hearings.

(iii) Oral evidence at hearings shall be taken only on oath or affirmation. The applicant shall have the right to testify unless he or she specifically waives such right or fails to appear at the hearing. If the applicant does not testify on his or her behalf, the applicant may be called and examined by the panel of the board, the executive director, and any member of the specialty committee. The applicant's failure to appear at the hearing ordered by the board, after receipt of written notice, shall constitute a waiver of the applicant's right to a hearing before the board.

(iv) At any hearing, the panel of the board, the executive director, any member of the appropriate specialty committee, and the applicant shall have these rights: (a) to call and examine witnesses; (b) to offer exhibits; (c) to cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; and (d) to impeach any witness regardless of who first called such witness to testify and to rebut any evidence.

(v) Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(vi) Any hearing may be recessed or adjourned from time to time at the discretion of the panel.

(9) *Failure of applicant to petition the board for review or request a hearing before the board within the time allowed by these rules.* If the applicant does not petition the board for review or request a hearing before the board regarding the specialty committee's recommendation of rejection of the application within the time allowed by these rules, the board shall act on the matter at its next board meeting.

(b) *Failure of a written examination.* Prepared and Administered by a Certification Committee.

(1) *Review of examination.* Within 30 days of the mailing of the notice from the board's executive director that the applicant has failed the written examination, the applicant may review his or her examination at the office of the board at a time designated by the executive director. The applicant shall not remove the examination from the board's office.

(2) *Petition for grade review.* If, after reviewing the examination, the applicant feels an error or errors were made in the grading, he or she may file with the executive director a petition for grade review. The petition must be filed within 45 days of the mailing of the notice of failure and should set out in detail the area or areas which, in the opinion of the applicant, have been incorrectly graded. Supporting information may be filed to substantiate the applicant's claim. At the time of filing the petition, the applicant must either (A) request a hearing before a three-member panel of the board; or (B) waive his or her right to a hearing before the board and request that the board render a decision based upon its review of the applicant's examination, supporting documents, and the recommendations of the review committee of the specialty committee.

(3) *Review procedure.* The applicant's examination and petition shall be submitted to a panel consisting of a minimum of at least three members of the specialty committee (the review committee of the specialty committee). All information will be submitted in blind form, the staff being responsible for

deleting any identifying information on the examination or the petition. The review committee of the specialty committee shall review the entire examination of the applicant. The review committee of the specialty committee shall recommend to the board that the grade of the examination remain the same or be changed.

(4) *Decision of the board.* A panel of the board shall consider the applicant's petition for grade review either by hearing or by a review only of the applicant's submitted materials.

(5) *Hearing procedures.* The rules set forth in Rule .1801(a)(8) above shall be followed when an applicant petitions for a hearing before the board for a grade review of his or her examination.

(6) *Burden of proof: Preponderance of the evidence.* The panel of the board shall apply the preponderance of the evidence rule in determining whether the applicant's grade on the examination should remain the same or be changed. The burden of proof is upon the applicant.

(c) *Failure of a written examination prepared and administered by a testing organization on behalf of the board.*

The applicant shall comply with the review and appeal procedures of any testing organization retained by the board to prepare and administer the certification examination.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994, Amended Effective June 1, 1995; Amended November 16, 2006.

SECTION .2200. CERTIFICATION STANDARDS FOR THE BANKRUPTCY LAW SPECIALTY

D.2205. Standards for certification as a specialist in bankruptcy law.

Each applicant for certification as a specialist in bankruptcy law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification as a specialist in bankruptcy law:

(a) *Licensure and practice.* An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) *Substantial involvement.* An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of bankruptcy law.

(1) Substantial involvement shall mean during the five years preceding the application, the applicant has devoted an average of at least 500 hours a year to the practice of bankruptcy law, but not less than 400 hours in any one year.

(2) Practice shall mean substantive legal work done primarily for the purpose of legal advice or representation, or a practice equivalent.

(3) Practice equivalent shall mean, after admission to the bar of any state, District of Columbia, or a U.S. territorial possession

(A) service as a judge of any bankruptcy court, service as a clerk of any bankruptcy court, or service as a standing trustee;

(B) corporate or government service, including military service, after admission to the bar of any state, the District of Columbia, or any U.S. territorial possession, but only if the bankruptcy work done was legal advice or representation of the corporation, governmental unit, or individuals connected therewith;

(C) service as a deputy or assistant clerk of any bankruptcy court, as a research assistant to a bankruptcy judge, or as a law professor teaching

bankruptcy and/or debtor-creditor related courses may be substituted for one year of experience to meet the five-year requirement.

(c) *Continuing legal education.* An applicant must have earned no less than 36 hours of accredited continuing legal education (CLE) credits in bankruptcy law, during the three years preceding application with not less than 6 credits in any one year.

(d) *Peer review.* An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be a judge of any bankruptcy court.

(2) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(3) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) *Examination.* The applicant must pass a written examination designed to test the applicant's knowledge and ability in bankruptcy law.

History Note: Statutory Authority G.S. 84-23, Readopted Effective December 8, 1994; Amended November 16, 2006.

SUBCHAPTER 1G. THE PLAN FOR CERTIFICATION OF PARALEGALS

SECTION .0100. THE PLAN FOR CERTIFICATION OF PARALEGALS

G.0105. Appointment of Members; When; Removal.

(a) *Appointment.* The council shall appoint the members of the board, provided, however, after the appointment of the initial members of the board, each paralegal member shall be selected by the council from two nominees determined by a vote by mail of all active certified paralegals in an election conducted by the board.

(b) *Procedure for Nomination of Candidates for Paralegal Members.*

(1) *Composition of Nominating Committee.* At least 60 days prior to a meeting of the council at which one or more paralegal members of the board are subject to appointment for a full three year term, the board shall appoint a nominating committee comprised of certified paralegals as follows:

(i) A representative selected by the North Carolina Paralegal Association;

(ii) A representative selected by the North Carolina Bar Association Legal Assistants Division;

(iii) A representative selected by the North Carolina Academy of Trial Lawyers Legal Assistants Division;

(iv) Three representatives from three local or regional paralegal organizations to be selected by the board; and

(v) An independent paralegal (not employed by a law firm, government entity, or legal department) to be selected by the board.

(2) *Selection of Candidates.* The nominating committee shall meet within 30 days of its appointment to select five (5) certified paralegals as candidates for each paralegal member vacancy on the board for inclusion on the ballot to be mailed to all active certified paralegals.

(3) *Vote of Certified Paralegals.* At least 30 days prior to the meeting of the council at which a paralegal member appointment to the board will be made, a ballot shall be mailed to all active certified paralegals at each certified paralegal's address of record on file with the North Carolina State Bar. The ballot shall be accompanied by written instructions, and shall state how many paralegal member positions on the board are subject to appointment, the names of the candidates selected by the nominating committee for each such position, and when and where the ballot should be returned. Write-in candidates shall be permitted and the instructions shall so state. Each ballot shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. The board shall maintain appropriate records respecting how many ballots were mailed to prospective voters in each election as well as how many ballots are returned. Only original ballots will be accepted. Ballots received after the deadline stated on the ballot will not be counted. The names of the two candidates receiving the most votes for each open paralegal member position shall be the nominees submitted to the council.

(c) *Time of Appointment.* The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually at the quarterly meeting of the council occurring on the anniversary of the appointment of the initial board.

(d) *Vacancies.* Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council, subject to the requirements of Rule .0105(a)1, at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

(e) *Removal.* Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

History Note: Adopted October 6, 2004;
Amended effective March 8, 2007.

G.0119. Standards for Certification of Paralegals.

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) *Education.* The applicant must have earned one of the following:

(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program; or

(B) an associate's or bachelor's degree in any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education and a certificate from a qualified paralegal studies program.

(2) *Examination.* The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability. The board shall assure that the contents and grading of the examinations are designed to produce a uniform minimum level of competence among the certified paralegals.

(b) *Alternative Qualification Period.* For a period not to exceed two years after the date that applications for certification are first accepted by the board, an applicant may qualify by satisfying one of the following:

(1) earned a high school diploma, or its equivalent, worked as a paralegal and/or a paralegal educator in North Carolina for not less than 5000 hours during the five years prior to application, and, during the 12 months prior to application, completed three hours of continuing legal education in professional responsibility, as approved by the board;

(2) obtained and maintained at all times prior to application the designation Certified Legal Assistant (CLA)êrtified Paralegal (CP), PACE-Registered Paralegal (RP), or other national paralegal credential approved by the board, and worked as a paralegal and/or a paralegal educator in North Carolina for not less than 2000 hours during the two years prior to application; or

(3) worked as a paralegal and/or a paralegal educator in North Carolina for not less than 2000 hours during the two years prior to application and fulfilled one of the following educational requirements:

(A) set forth in Rule .0119(a)(1), or

(B) earned an associate's or bachelor's degree in any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education and successfully completed at least the equivalent of 18 semester credits at a qualified paralegal studies program, any portion of which credits may also satisfy the requirements for the associate's or bachelor's degree.

(c) Notwithstanding an applicant's satisfaction of the standards set forth in Rule .0119(a) or (b), no individual may be certified as a paralegal if:

(1) the individual's certification or license as a paralegal in any state is under suspension or revocation;

(2) the individual's license to practice law in any state is under suspension or revocation;

(3) the individual has been convicted of a criminal act that reflects adversely on the individual's honesty, trustworthiness or fitness as a paralegal; or

(4) the individual is not a legal resident of the United States.

(d) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications, examinations and examination scores, files, reports, investigations, hearings, findings, recommendations, and adverse determinations shall be confidential so far as is consistent with the effective administration of this plan, fairness to the applicant and due process of law.

(e) *Qualified Paralegal Studies Program.* A qualified paralegal studies program is a program of paralegal or legal assistant studies that is an institutional member of the Southern Association of Colleges and Schools or other regional accrediting agency recognized by the United States Department of Education, and is either

(1) approved by the American Bar Association;

(2) an institutional member of the American Association for Paralegal Education; or

(3) offers at least the equivalent of 18 semester credits of coursework in paralegal studies as prescribed by the American Bar Association Guidelines for the Approval of Paralegal Education.

(f) *Designation as a Qualified Paralegal Studies Program.* The board shall determine whether a paralegal studies program is a qualified paralegal studies program upon submission by the program of an application to the board provided, however, a paralegal studies program is not required to submit an application for qualification as long as the program satisfies the requirements of Rule .0119(e)(1) or (2).

(1) A program designated by the board as a qualified paralegal studies program shall renew its application for designation every five years.

(2) An applicant for certification who lists on a certification application a paralegal studies program that does not satisfy the requirements of Rule

.0119(e)(1) or (2) or that has not been designated by the board as a qualified paralegal studies program shall be responsible for obtaining a completed application for designation from the program or shall submit the information required on the application for determination that the program is a qualified paralegal studies program.

(3) Designation of a paralegal studies program as a qualified paralegal studies program under this section does not constitute an approval or an endorsement of the program by the board or the North Carolina State Bar.

History Note: Adopted October 6, 2004; Amended effective March 2, 2006; Amended effective March 8, 2007.

G.0122. Right to Review and Appeal to Council.

(a) An individual who is denied certification or continued certification as a paralegal or whose certification is suspended or revoked shall have the right to a review before the board pursuant to the procedures set forth below and, thereafter, the right to appeal the board's ruling thereon to the council under such rules and regulations as the council may prescribe.

(b) *Notification of the Decision of the Board.* Following the meeting at which the board denies certification for failure to meet the standards for certification, including failing the examination, denies continued certification, or suspends or revokes certification, the executive director shall promptly notify the individual in writing of the decision of the board. The notification shall specify the reason for the decision of the board and shall inform the individual of his or her right to request a review before the board.

(c) *Request for Review by the Board.* Except as provided in paragraph (e) of this rule, within 30 days of the mailing of the notice from the executive director described in paragraph (b) of this rule, the individual may request review by the board. The request shall be in writing and state the reasons for which the individual believes the prior decision of the board should be reconsidered and withdrawn. The request shall state whether the board's review shall be on the written record or at a hearing.

(d) *Review by the Board.* A three-member panel of the board shall be appointed by the chair of the board to reconsider the board's decision and take action by a majority of the panel. At least one member of the panel shall be a lawyer member of the board and at least one member of the panel shall be a paralegal member of the board. The decision of the panel shall constitute the final decision of the board.

(1) *Review on the Record.* If requested, the panel shall review the entire written record including the individual's application, all supporting documentation, and any written materials submitted by the individual within 30 days of mailing the request for review. The panel shall make its decision within sixty (60) days of receipt of the written request for review from the individual.

(2) *Review Hearing.* If requested, the panel shall hold a hearing at a time and location that is convenient for the panel members and the individual provided the hearing occurs within sixty (60) days of receipt of the written request for review from the individual. The hearing shall be informal. The Rules of Evidence and the Rules of Civil Procedure shall not apply. The individual may be represented by lawyer at the hearing, may offer witnesses and exhibits, and may question witnesses for the board. The panel may ask witnesses to appear and may consider exhibits on its own request. Witnesses shall not be sworn. The hearing shall not be reported unless the applicant pays the costs of the transcript and arranges for the preparation of the transcript with the court reporter.

(3) *Decision of the Panel.* The individual shall be notified in writing of the decision of the panel and, if unfavorable, the right to appeal the decision to the council under such rules and regulations as the council may prescribe.

(e) *Failure of Written Examination.* Within 30 days of the mailing of the notice from the board's executive director that an individual has failed the written examination, the individual may review his or her examination at the office of the board at a time designated by the executive director. The individual shall be allowed not more than three hours for such review and shall not remove the examination from the board's office or make photocopies of any part of the examination.

(1) *Request for Review by the Board.* Within 30 days of individual's review of his or her examination, the individual may request review by the board pursuant to the procedures set forth in paragraph (c) of this rule. The request should set out in detail the area or areas which, in the opinion of the individual, have been incorrectly graded. Supporting information may be filed to substantiate the individual's claim.

(2) *Regarding Subcommittee.* Upon receipt of a request for review of a failed examination, the chair of the Certification Committee shall appoint a subcommittee consisting of at least three members of the Certification Committee. All information shall be submitted to the subcommittee in blind form by the staff. The subcommittee shall re-grade the entire examination and shall make a report and recommendation on whether to change the grade to passing to the panel appointed by the chair of the board to hear the review. The review shall thereafter follow the procedures set forth in paragraph (d) of this rule.

History Note: Adopted October 6, 2004;
Amended effective March 8, 2007.

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THE REVISED RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

Revised effective February 27, 2003,
with amendments effective March 8, 2007.

A complete set of all referenced ethics opinions may be obtained from the North Carolina State Bar. Contact Jennifer Eichenberger, Director of Communications, P.O. Box 25908, Raleigh, N.C. 27611.

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PREAMBLE AND SCOPE

Rule 0.1. Preamble: A lawyer's professional responsibilities.

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal

affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] A lawyer should render public interest legal service and provide civic leadership. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

[8] The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay, and as leaders of their communities, states, and nation, lawyers use their education and experience to improve society. It is the basic responsibility of each lawyer to provide community service, community leadership, and public interest legal services without fee, or at a substantially reduced fee, in such areas as poverty law, civil rights, public rights law, charitable organization representation, and the administration of justice.

[9] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer. Personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in, or otherwise support, the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus the profession and government instituted additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs were developed, and programs will be developed by the profession and the government. Every lawyer should support all proper efforts to meet this need for legal services.

[10] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[11] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and, at the same time, assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[12] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[13] Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel with courtesy and respect. The legal dispute of the client must never become the lawyer's personal dispute with opposing counsel. A lawyer, moreover, should provide zealous but honorable representation without resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves behave with dignity. A lawyer's word to another lawyer should be the lawyer's bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster civility among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties.

[14] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[15] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for the abuse of legal authority is more readily challenged by a self-regulated profession.

[16] The legal profession's relative autonomy carries with it a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[17] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended November 16, 2006.

Rule 1.7. Conflict of interest: Current clients.

CASE NOTES

Conflict of Interest Not Shown. — No evidence in the record indicated that an attorney's representation of several of a testatrix's children involved a concurrent conflict of interest or that he failed to have the necessary informed consent from his clients regarding an aggregate settlement in violation of N.C. R. Prof. Conduct 1.7(a) or 1.8(g); however, the attorney's letters to the court, his attempts to reopen virtually all of the points of contention that had been laid to rest during the settlement negotiations, and his behavior at hearings provided ample support a conclusion that the attorney violated N.C. R. Prof. Conduct 8.4(d). Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Hearing on Conflict of Interest. — Because defendant did not waive her right to conflict free counsel, she argued that she claimed possession of the heroin and the paraphernalia to protect her boyfriend, and because he was represented by defense counsel's boss, there was a potential for a conflict under N.C. R. Prof. Conduct 1.7(a); thus, a hearing should have been held.

Rule 1.8. Conflict of interest: Current clients: Specific rules.

CASE NOTES

No Conflict of Interest Found. — No evidence in the record indicated that an attorney's representation of several of a testatrix's children involved a concurrent conflict of interest or that he failed to have the necessary informed consent from his clients regarding an aggregate settlement in violation of N.C. R. Prof. Conduct 1.7(a) or 1.8(g); however, the attorney's letters to the court, his attempts to reopen virtually all of the points of contention that had been laid to rest during the settlement negotiations, and his behavior at hearings provided ample support a conclusion that the attorney violated N.C. R. Prof. Conduct 8.4(d). Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Where a bankruptcy trustee brought an adversary proceeding against a former officer of the bankruptcy debtor, and the trustee previously communicated with the officer in relation to another bankruptcy and other matters, there was no violation of N.C. R. Prof. Conduct 1.8(b) to warrant disqualification of the trustee, since nothing in the communications between the trustee and the officer was related to personal information of the officer or other parties in the proceeding. Peavey v. Bradley (In re Heritage Med. Assocs., P.A.), — Bankr. —, 2007 Bankr. LEXIS 581 (Bankr. E.D.N.C. Jan. 9, 2007).

Cited in Baxley v. Jackson, — N.C. App. —, 634 S.E.2d 905, 2006 N.C. App. LEXIS 2055 (2006).

Rule 1.9. Duties to former clients.

CASE NOTES

Conflict of Interest Shown. — In a patent infringement suit regarding an insulating structure that allowed access to attics while minimizing heat loss, defendants' attorney was disqualified under N.C. R. Prof. Conduct 1.9 because he had previously been a partner in a law firm that filed a patent reissue application, and although he did not actually work on the reissue application or acquire confidential information relating to it, his name appeared on the application and other supporting document and he personally benefitted from legal fees paid to his firm by plaintiff. Attic Tent, Inc. v. Copeland, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 57601 (W.D.N.C. Aug. 14, 2006).

Conflict of Interest Not Shown. — Where a bankruptcy trustee brought an adversary proceeding against a former officer of the bankruptcy debtor, and the trustee previously represented in bankruptcy an entity of which the officer was also a principal, there was no violation of N.C. R. Prof. Conduct 1.9(a) to warrant disqualification of the trustee, since the prior bankruptcy case was not substantially related to the instant case. Peavey v. Bradley

(In re Heritage Med. Assocs., P.A.), — Bankr. —, 2007 Bankr. LEXIS 581 (Bankr. E.D.N.C. Jan. 9, 2007).

Rule 1.15-4. Interest on lawyers' trust accounts.

(a) Pursuant to a plan promulgated by the North Carolina State Bar and approved by the North Carolina Supreme Court, a lawyer may elect to create or maintain an interest bearing general trust account for those funds of clients which, in the lawyer's good faith judgment, are nominal in amount or are expected to be held for a short period of time. Funds deposited in a permitted interest bearing general trust account under the plan must be available for withdrawal upon request and without delay. The account shall be maintained in a bank. The North Carolina State Bar shall furnish to each lawyer or firm that elects to participate in the Interest on Lawyers' Trust Account (IOLTA) plan, a suitable plaque or scroll indicating participation in the program, which plaque or scroll shall be exhibited in the office of the participating lawyer or firm.

(b) Lawyers or law firms electing to deposit client funds in a general trust account under the plan shall direct the bank:

(1) to remit interest or dividends, as the case may be (less any deduction for bank service charges, fees, and taxes collected with respect to the deposited funds) at least quarterly to the North Carolina State Bar;

(2) to transmit with each remittance to the North Carolina State Bar a statement showing the name of the lawyer or law firm maintaining the account with respect to which the remittance is sent and the rate of interest applied in computing the remittance; and

(3) to transmit to the depository lawyer or law firm at the same time a report showing the amount remitted to the North Carolina State Bar and the rate of interest applied in computing the remittance.

(c) As used herein, "Confidential Information" means all information regarding IOLTA account(s) other than (1) a lawyer's or law firm's status as a participant, former participant or non-participant in the IOLTA program, and (2) information regarding the policies and practices of any bank in respect of IOLTA trust accounts, including rates of interest paid, service charge policies, the number of IOLTA accounts at such bank, the total amount on deposit in all IOLTA accounts at such bank, the total amounts of interest paid to the IOLTA program and the total amount of service charges imposed by such bank upon such accounts.

Confidential Information shall not be disclosed by the staff, or trustees of NC IOLTA to any person or entity, except that Confidential Information may be disclosed (1) to any chairperson of the grievance committee, staff attorney, or investigator of the North Carolina State Bar upon his or her written request specifying the information requested and stating that the request is made in connection with a grievance complaint or investigation regarding one or more trust accounts of a lawyer or law firm; or, (2) in response to a lawful order or other process issued by a court of competent jurisdiction, or a subpoena, investigative demand, or similar notice issued by a federal, state, or local law enforcement agency.

(d) The North Carolina State Bar shall periodically deliver to each nonparticipating lawyer a form whereby the lawyer may elect, not to participate in the IOLTA plan. If a lawyer does not so elect within the time provided, the lawyer shall be deemed to have opted to participate in the plan and shall provide to the North Carolina State Bar such information as is required to participate in IOLTA.

(e) A lawyer or law firm participating in the IOLTA plan may terminate participation at any time by notifying the North Carolina State Bar or the

IOLTA Board of Trustees. Participation will be terminated as soon as practicable after receipt of written notification from a participating lawyer or firm.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Redesignated from former Rule 1.15-3, May 4, 2000; Amended effective August 24, 2000; Amended February 27, 2003; Amended effective March 8, 2007.

Rule 1.17. Sale of a law practice.

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice, except the seller may work for the purchaser as an independent contractor and may provide legal representation at no charge to indigent persons or to members of the seller's family;

(b) The entire practice, or the entire area of practice, is sold one or more lawyers or law firms;

(c) Written notice is sent to each of the seller's clients regarding:

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel and to take possession of the client's files prior to the sale or at any time thereafter; and

(3) the fact that the client's consent to the transfer of the client's files and legal representation to the purchaser will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice.

(d) If the seller or the purchaser identifies a conflict of interest that prohibits the purchaser from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel.

(e) If a client cannot be given notice, the files and the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary for the court to decide whether to issue the order. In the event the court fails to grant a substitution of counsel in a matter, that matter shall not be included in the sale and the sale otherwise shall be unaffected.

(f) The fees charged clients shall not be increased by reason of the sale.

(g) The seller and purchaser may agree that the purchaser does not have to pay the entire sales price for the seller's law practice in one lump sum. The seller and purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating Rules 1.5(e) and 5.4(a). The seller, however, shall have no say regarding the purchaser's conduct of the law practice.

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later

resumes private practice upon being defeated in a contested or a retention election for the office.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as an independent contract lawyer for the purchaser. Permitting the seller to continue to work for the practice will assist in the smooth transition of cases and will provide mentoring to new lawyers. The requirement that the seller cease private practice also does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity which provides legal services to the poor, or as in-house counsel to a business. Similarly, the Rule allows the seller to provide *pro bono* representation to indigent persons on his own initiative and to provide legal representation to family members without charge.

[4] The Rule permits a sale attendant upon discontinuing the private practice of law from an office that is within a one-hundred (100) mile radius of the purchased practice. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another part of North Carolina or to another state.

Sale of Entire Practice or Entire Area of Practice

[5] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of a less than the entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[6] Written notice of the proposed sale must be sent to all clients who are currently represented by the seller and to all former clients whose files will be transferred to the purchaser. Although it is not required by this rule, the placement of a notice of the proposed sale in a local newspaper of general circulation would supplement the effort to provide notice to clients as required by subpart (c) of the rule.

[7] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation.Preservation of client confidences requires that the petition for a court order be considered in camera.

[8] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser, the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 30 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice. The notice to clients must advise clients that they have a right to retain a lawyer other than the purchaser. In addition, the notice must inform clients that their right to counsel of their choice continues after the sale even though they consent to the transfer of the representation to the purchaser.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts which can be agreed to (see Rule 1.7) regarding conflicts and Rules 1.0(e) for the definition of informed

consent); and the obligation to protect information relating to the representation (see Rules1.6 and 1.9).

[12] If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by the Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended February 27, 2003; Amended November 16, 2006.

Rule 1.18. Duties to prospective client.

CASE NOTES

Appearance of Impropriety. — In a patent infringement suit regarding an insulating structure that allowed access to attics while minimizing heat loss, plaintiff's attorney was recused under N.C. R. Prof. Conduct 1.18 because he had previously discussed the patent issue and defendants' financial condition with defendants, and the fact that during this conversation he recorded plaintiff's patent number supported the contention that he discussed confidential information concerning the design and construction of the product that was central to the lawsuit. Attic Tent, Inc. v. Copeland, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 57601 (W.D.N.C. Aug. 14, 2006).

ADVOCATE

Rule 3.3. Candor toward the tribunal.

CASE NOTES

Cited in Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Rule 3.4. Fairness to opposing party and counsel.

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, counsel or assist a witness to hide or leave the jurisdiction for the purpose of being unavailable as a witness, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey or advise a client or any other person to disobey an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to test the validity of such an obligation;

(d) in pretrial procedure,

(1) make a frivolous discovery request

(2) fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party or

(3) fail to disclose evidence or information that the lawyer knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, ask an irrelevant question that is intended to degrade a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or a managerial employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses, including lost income, or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Paragraph (c) permits a lawyer to take steps in good faith and within the framework of the law to test the validity of rules, however, the lawyer is not justified in consciously violating such rules and the lawyer should be diligent in the effort to guard against the unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that the lawyer believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless the lawyer believes that the statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing the witness; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

[5] Paragraph (d) makes it clear that a lawyer must be reasonably diligent in making inquiry of the client, or third party, about information or documents responsive to discovery requests or disclosure requirements arising from statutory law, rules of procedure, or caselaw. "Reasonably" is defined in Rule 0.1, Terminology, as meaning "conduct of a reasonably prudent and competent lawyer." Rule 0.1(i). When responding to a discovery request or disclosure requirement, a lawyer must act in good faith. The lawyer should impress upon the client the importance of making a thorough search of the client's records and responding honestly. If the lawyer has reason to believe that a client has not been forthcoming, the

lawyer may not rely solely upon the client's assertion that the response is truthful or complete.

[6] To bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, and as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact and is prohibited by paragraph (e). However, a lawyer may argue, on an analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

[7] Paragraph (f) permits a lawyer to advise managerial employees of a client to refrain from giving information to another party because the statements of employees with managerial responsibility may be imputed to the client. See also Rule 4.2.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended February 27, 2003; Amended November 16, 2006.

Rule 3.5. Impartiality and decorum of the tribunal.

CASE NOTES

Cited in Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Rule 3.8. Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) after reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client, or participate in the application for the issuance of a search warrant to a lawyer for the seizure of information of a past or present client in connection with an investigation of someone other than the lawyer, unless:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information.

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and

exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely to convict. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. *See* the ABA Standards of Criminal Justice Relating to the Prosecution Function. A systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] The prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of government powers, such as in the selection of cases to prosecute. During trial the prosecutor is not only an advocate, but he or she also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all. In our system of criminal justice, the accused is to be given the benefit of all reasonable doubt. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence known to him or her that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused.

[3] Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[4] Every prosecutor should be aware of the discovery requirements established by statutory law and case law. *See, e.g.,* G.S. 15A-903 et. seq, *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. U.S.*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995). The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial hardship to an individual or to the public interest.

[5] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings, and search warrants for client information, to those situations in which there is a genuine need to intrude into the client-lawyer relationship. The provision applies only when someone other than the lawyer is the target of a criminal investigation.

[6] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[7] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law- enforcement personnel and other relevant individuals.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended October 17, 2001; Amended February 27, 2003; Amended November 16, 2006.

LAW FIRMS AND ASSOCIATIONS

Rule 5.5. Unauthorized practice of law.

(a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted to practice in another jurisdiction, but not in this jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction if the lawyer's conduct is in accordance with these Rules and:

(1) the lawyer is authorized by law or order to appear before a tribunal or administrative agency in this jurisdiction or is preparing for a potential proceeding or hearing in which the lawyer reasonably expects to be so authorized; or

(2) other than engaging in conduct governed by paragraph (1):

(A) the lawyer provides legal services to the lawyer's employer or its organizational affiliates and the services are not services for which pro hac vice admission is required; a lawyer acting pursuant to this paragraph is not subject to the prohibition in Paragraph (b)(1);

(B) the lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice;

(C) the lawyer acts with respect to a matter that is in or is reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of a client in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission is required;

(D) the lawyer is associated in the matter with a lawyer admitted to practice in this jurisdiction who actively participates in the representation; or

(E) the lawyer is providing services limited to federal law, international law, the law of a foreign jurisdiction or the law of the jurisdiction in which the lawyer is admitted to practice.

(F) the lawyer is the subject of a pending application for admission to the North Carolina State Bar by comity, having never previously been denied admission to the North Carolina State Bar for any reason, and

(i) is licensed to practice law in a state with which North Carolina has comity in regard to admission to practice law;

(ii) is a member in good standing in every jurisdiction in which the lawyer is licensed to practice law;

(iii) has satisfied the educational and experiential requirements prerequisite to comity admission to the North Carolina State Bar;

(iv) is domiciled in North Carolina;

(v) has established a professional relationship with a North Carolina law firm and is actively supervised by at least one licensed North Carolina attorney affiliated with that law firm; and

(vi) gives written notice to the secretary of the North Carolina State Bar that the lawyer intends to begin the practice of law pursuant to this provision, provides the secretary with a copy of the lawyer's application for admission to the State Bar, and agrees that the lawyer is subject to these rules and the disciplinary jurisdiction of the North Carolina State Bar.

A lawyer acting pursuant to this provision is not subject to the prohibition in paragraph (b)(1), may not provide services for which *pro hac vice* admission is required, and shall be ineligible to practice law in this jurisdiction immediately upon being advised that the lawyer's application for comity admission has been denied.

(d) A lawyer shall not assist another person in the unauthorized practice of law.

(e) A lawyer or law firm shall not employ a disbarred or suspended lawyer as a law clerk or legal assistant if that individual was associated with such lawyer or law firm at any time on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

(f) A lawyer or law firm employing a disbarred or suspended lawyer as a law clerk or legal assistant shall not represent any client represented by the disbarred or suspended lawyer or by any lawyer with whom the disbarred or suspended lawyer practiced during the period on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

COMMENT

[1] A lawyer may regularly practice law only in a jurisdiction in which the lawyer is admitted to practice. The practice of law in violation of lawyer-licensing standards of another jurisdiction constitutes a violation of these Rules. This Rule does not restrict the ability of lawyers authorized by federal statute or other federal law to represent the interests of the United States or other persons in any jurisdiction.

[2] There are occasions in which lawyers admitted to practice in another jurisdiction, but not in this jurisdiction, will engage in conduct in this jurisdiction under circumstances that do not create significant risk to the interests of their clients, the courts or the public. Paragraph (c) identifies six situations in which the lawyer may engage in such conduct without fear of violating this Rule. All such conduct is subject to the duty of competent representation. See Rule 1.1. Rule 5.5 does not address the question of whether other conduct constitutes the unauthorized practice of law. The fact that conduct is not included or described in this Rule is not intended to imply that such conduct is the unauthorized practice of law. With the exception of paragraph (c)(2)(A) and (F), nothing in this Rule is intended to authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice here. Presence may be systematic and continuous even if the lawyer is not physically present in this jurisdiction. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b). However, a lawyer admitted to practice in another jurisdiction who is a partner, shareholder or employee of an interstate or international law firm that is registered with the North Carolina State Bar pursuant to 27 NCAC 1E, Section .0200, may practice, subject to the limitations of this Rule, in the North Carolina offices of such law firm.

[3] Lawyers not admitted to practice generally in the jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before a the tribunal or agency. Such authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(1), a lawyer does not violate this Rule when the lawyer appears before such a tribunal or agency. Nor does a lawyer violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing, such as factual investigations and discovery conducted in connection with a litigation or administrative proceeding, in which an out-of-state lawyer has been admitted or in which the lawyer reasonably expects to be admitted. Nothing in paragraph (c)(1) is intended to authorize a lawyer not licensed in this jurisdiction to solicit clients in this jurisdiction.

[4] When lawyers appear or anticipate appearing before a tribunal or administrative agency with authority to admit the lawyer to practice pro hac vice, their conduct is governed by paragraphs (a) and (c)(1) and not by (c)(2). Paragraph (c)(2) authorizes a lawyer to engage in certain conduct other than making or preparing for appearances before such a tribunal. For example, paragraph (c)(2)(A) recognizes that some clients hire a lawyer as an employee in circumstances that may make it impractical for the lawyer to become admitted to practice in this jurisdiction. Given that these clients are unlikely to be deceived about the training and

expertise of these lawyers, lawyers may act on behalf of such a client without violating this Rule. The lawyer may also act on behalf of the client's commonly owned organizational affiliates but only in connection with the client's matters.

[5] Paragraph (c)(2)(B) recognizes that the complexity of many matters requires that a lawyer whose representation of a client consists primarily of conduct in a jurisdiction in which the lawyer is admitted to practice, also be permitted to act on the client's behalf in other jurisdictions in matters arising out of or otherwise reasonably related to the lawyer's representation of the client. This conduct may involve negotiations with private parties, as well as negotiations with government officers or employees, and participation in alternative dispute-resolution procedures. This provision also applies when a lawyer is conducting witness interviews or other activities in this jurisdiction in preparation for a litigation or other proceeding that will occur in another jurisdiction where the lawyer is either admitted generally or expects to be admitted pro hac vice.

[6] Paragraph (c)(2)(C) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[7] Paragraph (c)(2)(D) recognizes that association with a lawyer licensed to practice in this jurisdiction is likely to protect the interests of both clients and the public. The lawyer admitted to practice in this jurisdiction, however, may not serve merely as a conduit for an out-of-state lawyer but must actively participate in and share actual responsibility for the representation of the client. If the admitted lawyer's involvement is merely pro forma, then both lawyers are subject to discipline under this Rule.

[8] Paragraph (c)(2)(F) permits a lawyer who is awaiting admission by comity to practice on a provisional and limited basis if certain requirements are met. As used in this paragraph, the term "professional relationship" refers to an employment or partnership arrangement.

[9] The definition of the practice of law is established by N.C. Gen. Stat. 84-2.1. Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (d) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[10] Lawyers may also provide professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[11] In the absence of statutory prohibitions or specific conditions placed on a disbarred or suspended attorney in the order revoking or suspending the license, such individual may be hired to perform the services of a law clerk or legal assistant by a law firm with which he or she was not affiliated at the time of or after the acts resulting in discipline. Such employment is, however, subject to certain restrictions. A licensed attorney in the firm must take full responsibility for and employ independent judgment in adopting any research, investigative results, briefs, pleadings, or other documents or instruments drafted by such individual. The individual may not directly advise clients or communicate in person or in writing in such a way as to imply that he or she is acting as an attorney or in any way in which he or she seems to assume responsibility for a client's legal matters. The disbarred or suspended attorney should have no communications or dealings with or on behalf of clients represented by such disbarred or suspended attorneys or by any individual or group of individuals with whom he or she practiced during the period on or after the date of the acts which resulted in discipline through and including the effective date of the discipline. Further, the employing attorney or law firm should perform no services for clients represented by the disbarred or suspended attorney during such period. Care should be taken to ensure that clients fully understand that the disbarred or suspended attorney is not acting as an attorney, but merely as a law clerk or lay employee. Under some circumstances, as where the individual may be known to clients or in the community, it may be necessary to make an affirmative statement or disclosure concerning the disbarred or suspended attorney's status with the law firm. Additionally, a disbarred or suspended attorney should be paid on some

fixed basis, such as a straight salary or hourly rate, rather than on the basis of fees generated or received in connection with particular matters on which he or she works. Under these circumstances, a law firm employing a disbarred or suspended attorney would not be acting unethically and would not be assisting a nonlawyer in the unauthorized practice of law.

[12] An attorney or law firm should not employ a disbarred or suspended attorney who was associated with such attorney or firm at any time on or after the date of the acts which resulted in the disbarment or suspension through and including the time of the disbarment or suspension. Such employment would show disrespect for the court or body which disbarred or suspended the attorney. Such employment would also be likely to be prejudicial to the administration of justice and would create an appearance of impropriety. It would also be practically impossible for the disciplined lawyer to confine himself or herself to activities not involving the actual practice of law if he or she were employed in his or her former office setting and obliged to deal with the same staff and clientele.

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended February 27, 2003; Amended November 16, 2006.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.3. Direct contact with potential clients.

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a potential client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.

(c) *Targeted Communications.* Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), every written, recorded or electronic communication from a lawyer soliciting professional employment from a potential client known to be in need of legal services in a particular matter shall include the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice) subject to the following requirements:

(1) *Written Communications.* Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in font that is as large as any other printing on the envelope. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the letter in font as large or larger than the lawyer's or law firm's name in the letterhead or masthead.

(2) *Electronic Communications.* The advertising notice shall appear in the "in reference" block of the address section of the communication. No other statement shall appear in this block. The advertising notice shall also appear, at the beginning and ending of the electronic communication, in a font as large

or larger than the lawyer's or law firm's name in any masthead on the communication.

(3) *Recorded Communications.* The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal services plan subject to the following:

(1) *Definition.* A prepaid legal services plan or a group legal services plan ("a plan") is any arrangement by which a person, firm, or corporation, not otherwise authorized to engage in the practice of law, in exchange for any valuable consideration, offers to provide or arranges the provision of legal services that are paid for in advance of the need for the service ("covered services"). In addition to covered services, a plan may provide specified legal services at fees that are less than what a non-member of the plan would normally pay. The legal services offered by a plan must be provided by a licensed lawyer who is not an employee, director, or owner of the plan. A plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.

(2) *Conditions for participation.*

(A) The plan must be operated by an organization that is not owned or directed by the lawyer;

(B) The plan must be registered with the North Carolina State Bar and comply with all applicable rules regarding such plans;

(C) The lawyer must notify the State Bar in writing before participating in a plan and must notify the State Bar no later than 30 days after the lawyer discontinues participation in the plan;

(2)(D) After reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with the Revised Rules of Professional Conduct and other pertinent rules of the State Bar;

(E) All advertisements by the plan representing that it is registered with the State Bar shall also explain that registration does not constitute approval by the State Bar; and

(F) Notwithstanding the prohibitions in paragraph (a), the plan may use in-person or telephone contact to solicit memberships or subscriptions provided:

(i) The solicited person is not known to need legal services in a particular matter covered by the plan; and

(ii) The contact does not involve coercion, duress, or harassment and the communication with the solicited person is not false, deceptive or misleading.

(e) For purposes of this rule, a potential client is a person with whom a lawyer would like to form a client-lawyer relationship.

COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of potential clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a potential client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the potential client to direct in-person, telephone or real-time elec-

tronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to potential client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a potential client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress, harassment, compulsion, intimidation, or threats within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a potential client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become potential clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] Paragraph (c) of this rule requires that all direct mail solicitations of potential clients must be mailed in an envelope on which the statement, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES," appears in capital letters. The statement must appear on the front of the envelope with no other distracting extraneous written statements other than the name and address of the recipient and the name and return address of the lawyer or firm. Postcards may not be used for direct mail solicitations. No embarrassing personal information about the recipient may appear on the back of the envelope. The advertising notice must also appear at the beginning of an enclosed letter or electronic communication in a font that is at least as large as the font used for the lawyer's or law firm's name in the letterhead or masthead. It must also appear in the "in reference to" section of an email communication. The requirement that certain communications be marked, "This is an advertisement for legal services," does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through

memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.3(d) as well as Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

History Note: Statutory Authority G.S. 84-23; Adopted July 24, 1997; Amended effective February 5, 2002; Amended February 27, 2003; Amended October 6, 2004; Amended November 16, 2006.

Rule 8.3. Reporting professional misconduct.

CASE NOTES

Successful Movant Can Seek Attorney Fees. — Inasmuch as the Rules of Professional Conduct of the North Carolina State Bar, including N.C. R. Prof. Conduct 8.3, require attorneys to maintain the integrity of the profession by bringing ethical violations to the attention of the state bar or the court having jurisdiction over the matter, if a movant is successful on a motion for fee disgorgement filed before the U.S. Bankruptcy Court for the Eastern District of North Carolina, Wilmington Division, that party is entitled to file an application for reasonable fees for services rendered in support of the motion to disgorge. In re Sledge, 352 B.R. 742, 2006 Bankr. LEXIS 2795 (Bankr. E.D.N.C. 2006).

Rule 8.4. Misconduct.

Legal Periodicals. — For note, "Not-So-Secrets? The State of the Attorney-Client Privilege in Norht Carolina in the Wake of In re Investigation of Death of Eric Miller and Crawford v. Washington," see 83 N.C. L. Rev. 1591 (2005).

CASE NOTES

Communications to Court and Misbehavior at Hearings. — No evidence in the record indicated that an attorney's representation of several of a testatrix's children involved a concurrent conflict of interest or that he failed to have the necessary informed consent from his clients regarding an aggregate settlement in violation of N.C. R. Prof. Conduct 1.7(a) or 1.8(g); however, the attorney's letters to the court, his attempts to reopen virtually all of the points of contention that had been laid to rest during the settlement negotiations, and his behavior at hearings provided ample support a conclusion that the attorney violated N.C. R. Prof. Conduct 8.4(d). Dunn v. Canoy, — N.C. App. —, 636 S.E.2d 243, 2006 N.C. App. LEXIS 2239 (2006).

Cited in N.C. State Bar v. Leonard, — N.C. App. —, 632 S.E.2d 183, 2006 N.C. App. LEXIS 1573 (2006).

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INDIGENT DEFENSE SERVICES

Adopted July 1, 2001, with amendments through February 6, 2007

Part 1
Rules for the Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level

Rule
1.5. Appointment Procedure.
1.9. Payment of Appointed Counsel.

Part 2
Rules for Providing Legal Representation in Capital cases

Subpart 2A. Appointment and Compensation of Trial Counsel in Capital Cases.
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2B.3. Compensation and Recoupment.
Subpart 2C. Appointment of Post-Conviction Counsel in Capital Cases.
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Part 3
Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals

3.2. Appointment of Appellate Counsel.
3.3. Compensation of Appellate Counsel.

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PART 1
RULES FOR THE CONTINUED DELIVERY OF SERVICES IN NON-CAPITAL CRIMINAL AND NON-CRIMINAL CASES AT THE TRIAL LEVEL

Rule 1.5. Appointment Procedure.

(a) *Districts Without a Public Defender Office.*

(1) In judicial districts that do not have a public defender office, each judicial district bar or county bar association shall adopt a plan or plans for the appointment by the court of qualified members of the private bar to represent indigent persons in non-capital criminal cases at the trial level. The plan may also include procedures for the appointment of counsel by the court in non-criminal cases at the trial level. Any plan adopted by a judicial district bar or county bar association shall provide for appointment of counsel on a systematic and impartial basis. To the extent a judicial district bar or county bar association plan does not address non-criminal or other categories of cases, the court shall appoint counsel in those cases on a systematic and impartial basis. A plan may be applicable to the entire district, or, at the election of the judicial district bar or county bar association, separate plans may be adopted by the district bar for use in each separate county within the district.

(2) Except as otherwise provided by the IDS Office, the plan or plans for a district or county in effect on June 30, 2001, shall govern the method by which counsel are thereafter selected in that district or county for appointment in non-capital criminal and non-criminal cases at the trial level. A plan is considered to be "in effect" on June 30, 2001, if by that date it has been adopted by the judicial district bar or county bar association, approved by the North Carolina State Bar, and certified to the clerk of superior court of the county to which the plan is applicable by the Secretary of the North Carolina State Bar.

(3) Beginning July 1, 2001, any revisions in a district or county plan must be adopted by the judicial district bar or county association and approved by the IDS Commission, following which the IDS Director shall certify the revised plan or plans to the clerk of superior court to which the plan or plans are applicable.

(4) Any provisions in district or county plans concerning appointment of counsel in capital or appellate cases, as defined in Parts 2 and 3 of these rules, shall be of no effect as of July 1, 2001.

(5) Any provisions in district or county plans that are inconsistent with rules now or hereafter adopted by the IDS Office shall be of no effect as of July 1, 2001.

(b) *Districts with a Public Defender Office.*

(1) No later than November 1, 2001, in judicial districts with a public defender office, the Public Defender shall submit to the IDS Director a proposed plan for the appointment of counsel in all cases subject to this part. The proposed plan shall provide for the making of appointments under the oversight of and pursuant to procedures adopted by the Public Defender.

(2) In developing the proposed plan, the Public Defender shall consult with the IDS Director and with the judicial district bench and bar in which the public defender's office is located. The IDS Director shall thereafter submit the proposed plan to the IDS Commission, which may approve the plan as submitted, modify it, or reject it. The plan adopted by the IDS Commission shall become the plan for appointment of counsel in that judicial district.

(3) After the Commission has adopted the initial plan for a judicial district with a public defender office, the IDS Director may, after consulting with the Public Defender, modify the plan and the requirements and procedures for appointing counsel in that judicial district as necessary to effectuate the purposes of the IDS Act. If any modifications being considered by the IDS Director substantially change the plan, the IDS Director shall submit the proposed changes to the IDS Commission for approval.

(4) Until a Public Defender's plan is approved by the IDS Commission, the court shall continue to appoint counsel in accordance with current procedure.

(5) The Public Defender shall not be appointed to represent, and shall not assign counsel to represent, a juvenile alleged to be abused, neglected, or dependent. In cases in which the guardian ad litem program operated by the Administrative Office of the Courts is unable to represent the juvenile, the court shall continue to appoint counsel for juveniles pursuant to G.S. 7B-1202.

(c) *Districts with a Special Counsel Office.* In judicial districts with a special counsel program, the court shall continue to appoint special counsel, pursuant to G.S. 122C-270, to represent all indigent respondents at all hearings, rehearings, and supplement hearings held at the state facility and on appeal. For cases assigned to a special counsel office that the office is unable to handle, the special counsel office shall adopt a plan for assigning such cases to qualified members of the private bar. The special counsel office shall submit any plan for approval and certification by the IDS Director.

(d) *Appointments Pursuant to Plans.*

(1) Except as otherwise provided by the IDS Director, all appointments of counsel in cases subject to this part shall be made in conformity with the plans described in this rule, unless the judge in cases subject to subsection (a), above, or the authority authorized to make appointments in cases subject to subsections (b) and (c), above, deems it proper in the furtherance of justice to appoint as counsel for a person a lawyer who is not on the certified plan or list or who is not next in sequence on the list.

(2) No attorney shall be appointed as counsel for a person in a non-capital criminal or non-criminal case in a court of any district unless the attorney has consented to placement of his or her name on the list of attorneys subject to appointment or, if the attorney has not agreed to do so, has otherwise consented to be appointed. The attorney named in the appointment order shall not delegate to another attorney any material responsibilities to the client, including representation at critical stages of the case, unless the court finds in open court that the substitute attorney practices in the same law firm as the

appointed attorney and is on the list of attorneys who are eligible for appointment to the particular case, that the client and the substitute attorney both consent to the delegation, and that the delegation is in the best interests of the client.

(3) No person for whom counsel is appointed shall be entitled to select or specify the attorney assigned to defend him or her.

(e) *Record Keeping.*

(1) In districts without a public defender office, the clerk of superior court of each county, under the direction of the Administrative Office of the Courts pursuant to G.S.7A-343(3) and (10), shall continue to file in his or her office, maintain, and keep current the plan for assignment of counsel in non-capital criminal and non-criminal cases, and a record of all counsel eligible for appointment under the plan, applicable to said county as certified by the Secretary of the North Carolina State Bar or IDS Director, as the case may be.

(2) No later than November 1, 2001, in districts with a public defender office, the Public Defender shall file in his or her office, maintain, and keep current the plan for assignment of counsel in non-capital criminal and non-criminal cases pursuant to subsection (b), above, and a record of all counsel eligible for appointment under the plan, applicable to said district as certified by the IDS Director.

(3) In districts with a special counsel program, the special counsel shall file in his or her office, maintain, and keep current the plan for assignment of counsel pursuant to subsection (c), above, and a record of all counsel eligible for appointment under the plan, applicable to said district as certified by the IDS Director.

(4) Orders for the appointment of counsel shall be entered by the court on a form approved by the IDS Director.

(f) *Authority to Implement Other Programs, Plans, and Contracts.* Nothing in these rules shall prohibit assignment of otherwise qualified counsel to represent indigent defendants pursuant to programs, plans, or contracts that may be implemented from time to time to improve quality, efficiency, and economy where such programs, plans, or contracts are approved by the IDS Director. Nothing in these rules shall preclude the IDS Commission from adopting and enforcing rules that supercede a judicial district bar plan. (Adopted July 1, 2001; Subsection (d) amended effective July 8, 2005; Subsection (a) amended effective February 10, 2006; Subsection (d) amended effective February 16, 2007.)

Subsection (a): The IDS Commission recognizes the continuing importance of district and county bar plans to the operation of the system, and in most respects this rule keeps the current plans in effect until the IDS Commission and IDS Office consider and implement changes. If a district bar or county bar association wishes to make changes to a plan after July 1, 2001, the changes must be approved by the IDS Commission rather than the North Carolina State Bar, which reflects the changes in authority implemented by the IDS Act. Many district and county bar plans do not specifically address non-criminal cases. If a plan does not address such cases, the court should appoint counsel on a systematic and impartial basis.

Subsection (b): Currently, in some districts with a public defender office, the judge assigns most indigent cases to the Public Defender, who then assigns to private counsel those cases that the office is unable to handle (either because of workload or conflict-of-interest reasons). All public defender offices are currently drafting plans that will expand this procedure to all districts with such an office. However, because all public defender offices are not in a position to begin performing this duty as of July 1, 2001, subsection (1) leaves current practices undisturbed until the Public Defender in the district submits a plan, which the IDS Director approves and certifies. The rule requires all Public Defenders to ensure that such a plan has been submitted, approved, and certified no later than November 1, 2001. Any plan adopted pursuant to this provision should address, among other things, the procedure to be followed when the public defender office has a conflict of interest.

Subsection (c): This subsection establishes a procedure similar to subsection (b), requiring special counsel offices (in districts where located) to develop plans for assigning to private

counsel cases that the office is unable to handle.

Subsection (d): As in the past, appointments should be made in accordance with the plans for each district. The subsection makes some changes, however. First, subsection (1) clarifies that in the interest of justice an attorney may be appointed who is not on the list regardless of whether the attorney regularly practices in the district. Second, subsection (2) prohibits appointment of an attorney unless the attorney consents to appointment, either by agreeing to be on the list or, if not on the list, by consenting to being appointed. Subsection (d)(2) was amended effective July 8, 2005 to clarify that an attorney appointed to a case may not delegate material responsibility for that case to another attorney who is not named in the appointment order. See *State v. Carter,* 66 N.C. App. 21, 23, 311 S.E.2d 5, 7 (1984); RPC 58 (1989). If an appointed attorney is unable to appear at a scheduled court appearance due to a conflict in another court, secured leave, illness, or a family emergency, subsection (d) does not prohibit the attorney from asking another lawyer to appear on his or her behalf and seek a continuance continuance or argue a bond reduction motion for an incarcerated client. Subsection (d) also does not prohibit an appointed attorney who is unavailable from sending another lawyer to interview an incarcerated client. In exceptional cases where the appointed attorney is unavailable, the court may allow the appointed attorney to delegate client responsibilities at critical stages of a case if the court makes the specified findings.

Subsection (e): The clerk of superior court continues to keep a record of current district bar plans and eligibility lists in districts without a public defender office. Public defender and special counsel offices will keep their plans on file in their offices. The court (judge or clerk) continues to make a record of appointments by entering the order of appointment on a revised version of the form that has been used by the AOC (AOC-CR-224).

Subsection (f): This subsection recognizes the authority of the IDS Office to modify appointment procedures and to adopt different methods for delivering services (such as contracting with attorneys rather than appointing them on a case-by-case basis). See G.S. 7A-498.3; G.S. 7A-498.5.

Rule 1.7. Withdrawal of Appointed Counsel.

Commentary:

Subsection (a): G.S. 15A-143 states that an attorney making a general appearance in a criminal case is obligated to represent the defendant "until entry of final judgment." Subsection (a) is intended to emphasize the attorney's further responsibility to advise the client concerning appeal and to enter notice of appeal if requested. This rule applies that requirement to all cases subject to this part unless otherwise provided by law.

Subsection (b): — This subsection restates the provisions in former Rule D.0405 of the State Bar Rules on withdrawal from a case at the trial level. If a person other than appointed counsel (such as the client, prosecutor, or IDS Director) requests that a judge of a court of competent jurisdiction remove counsel for good cause, the judge shall follow established law. See, e.g., State v. Poole, 305 N.C. 308, 289 S.E.2d 335 (1982); State v. Hutchins, 303 N.C. 321, 279 S.E.2d 788 (1981); see also State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991).

Subsection (c): — This subsection is new. Although contracts entered into by the IDS Office may require that attorneys obtain a judge's approval to withdraw from a case, they potentially may provide for a different method of reassigning cases.

Rule 1.9. Payment of Appointed Counsel.

(a) *Compensation at Trial.*

(1a) If an attorney seeks compensation for time spent waiting in court for multiple cases to be called or working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. For all cases finally disposed at the trial level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the trial judge within no more than one year after the date on which the case was finally disposed at the trial level. For all cases finally disposed at the trial level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the trial judge by January 1, 2006.

(1b) Upon completion of the representation of a person by appointed counsel in the trial court in a non-capital criminal or non-criminal case, the trial judge shall, upon application, enter an order fixing the fee to which the attorney is entitled. In doing so, the judge shall review the amount of time claimed by the

attorney, and shall approve an appropriate amount of time based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the effort and responsibility involved.

(2) Effective April 1, 2002, once the judge approves an appropriate amount of time pursuant to subsection (1b), above, the hourly rate for attorney compensation in such cases in both district and superior court, for both in-court and out-of-court time, shall be $65 per hour. For cases in which an attorney claims and the court approves less than one hour of time, the fee shall be $65.

(3) Even if the trial, hearing, or other proceeding is never held, preparation therefore is nevertheless compensable and, in extraordinary cases pending in superior court, the presiding judge may allow a fee for services rendered and payment for expenses incurred pending final determination of the case. In such cases, the time approved and hourly rate paid shall be set pursuant to subsections (1b) and (2), above.

(4) Fees shall be fixed by the district court judge who hears the case for actions or proceedings finally determined in the district court, and by the superior court judge who hears the case for actions or proceedings originating in or heard on appeal in superior court.

(5) This section does not preclude districts from compensating attorneys in the above cases based on methods other than hours per case, such as per case fee schedules or per session rates, or based on an hourly rate that differs from that set forth in subsection (2), above, provided that the alternative compensation method or rate is approved by the IDS Director. Any district using or proposing an alternative compensation method shall notify the IDS Director, and the IDS Director may approve the method used or proposed provided it is consistent with the purposes of the IDS Act.

(b) *Orders for Payment.* Orders for the payment of compensation to appointed counsel for representation shall be entered by the judge on a form approved by the IDS Director. A copy of the order for the payment of fees shall be forwarded by the clerk of superior court to the administrative Office of the Courts, Attn: Indigent Program, Financial Services Division, Courier Box 56-10-50, Raleigh, N.C. If no courier is available, a copy of the order shall be mailed to P.O. Box 2448, Raleigh, N.C. 27602.

(c) *Fee Schedules.* The IDS Director may authorize or require the use of fee schedules for the compensation of attorneys and the payment for services related to legal representation in non-capital criminal and non-criminal cases.

(d) *Compensation of Contract Counsel.* Compensation of attorneys performing work under contract with the IDS Office shall be paid in accordance with the terms of the contract.

(e) *Outside Compensation Prohibited.* Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the court or the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds. (Adopted July 1, 2002; Subsections (a) and (b) amended May 6, 2005; Subsection (e) amended September 15, 2006.)

Commentary:

This rule effectively continues the current practice on compensating appointed counsel in non-capital criminal and non-criminal cases. It incorporates substantial portions of former Rule D.0406 of the State Bar rules and of G.S. 7A-458 before it was revised by the IDS Act. Representation is complete within the meaning of this rule when counsel has fulfilled the obligations set forth in Rule 1.7(a), above. Courts using fee schedules in effect before the effective date of the IDS Act should notify the IDS Office of any such schedules. Because of the sheer number of non-capital criminal and non-criminal cases handled by appointed attorneys, the IDS Office is not presently in a position to assume responsibility for determining compensation throughout the state. How-

ever, the IDS Commission and IDS Office are developing plans for assuming that responsibility as soon as feasible.

Subsection (a): Subsection (a) was amended effective May 6, 2005 to clarify that attorneys can not double-bill the state for time spent waiting in court or working on multiple cases simultaneously. For all cases finally disposed at the trial level on or after July 1, 2005, the subsection was also amended to require attorneys to submit fee applications to the presiding judge within one year of the date of final disposition. Attorney fee applications submitted more than one year after the date of final disposition will not be paid from state funds.

Subsection (b): In entering orders for payment, courts should continue to use a revised version of the fee application form that has been used by the AOC (AOC-CR-225). Effective May 6, 2005, the clerk is no longer required to certify every individual fee application. However, fee applications must be sent to AOC Financial Services in a secure packet directly from the clerk's office.

Subsection (e): Subsection (e) was amended effective September 15, 2006 to clarify that, to avoid any potential for overreaching or the appearance of impropriety, an appointed attorney cannot subsequently accept fees as retained counsel from the client or the client's family. If family or friends of an indigent client want to contribute to non-counsel services, such as expert or support services, nothing in this subsection precludes them from doing so. However, the appointed attorney must place any such funds in his or her trust account and provide an accounting to the contributing family member and the IDS Director. If, during the course of representation as appointed counsel, an attorney learns that a client who was previously determined to be indigent has become financially able to pay for the representation, G.S. 7A-450(d) directs the attorney to inform the court. *But cf.* RPC 52 (Jan. 13, 1989) (directing counsel to "call upon his client to reveal that circumstance to the tribunal" and, if the client refuses to permit disclosure, to move to withdraw). If the court finds that the client is no longer indigent, the appointed attorney may move to withdraw or continue the representation *pro bono*.

PART 2
RULES FOR PROVIDING LEGAL REPRESENTATION IN CAPITAL CASES

Subpart 2A. Appointment and Compensation of Trial Counsel in Capital Cases.

Rule 2A.4. Compensation and Recoupment.

(a) *Compensation.* Appointed counsel who represented an indigent capital defendant at trial shall submit to the IDS Director an itemized fee application on a form prescribed by the IDS Director, showing the time counsel spent in trial representation of the defendant. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to the Administrative Office of the Courts for payment. If counsel is required pursuant to paragraph 2A.5(a)(iv) below to meet with the IDS Director to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent an indigent capital defendant may apply for and receive interim payments in the discretion of the IDS Director. For all cases finally disposed at the trial level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director within no more than one year after the date on which the case was finally disposed at the trial level. For all cases finally disposed at the trial level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director by January 1, 2006. Counsel may make a written request for a review of the amount of compensation approved by the IDS Director from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review. A retained attorney is not eligible to receive state funds

to supplement the amount of compensation he or she has received from a capital defendant or any third party.

(b) *Recoupment of Fees Generally.* To the extent required by law, capital defendants for whom counsel has been appointed under this part shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge shall then determine the amount to be recouped if recoupment is required by law.

(c) *Recoupment for Contract Services.* For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) *Outside Compensation Prohibited.* Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds. (Adopted July 1, 2001; Subsection (d) adopted effective November 12, 2004; Subsection (a) amended May 6, 2005; Subsection (d) amended effective September 15, 2006.)

Commentary:

Subsection (a): Counsel should continue to use a revised version of the capital case fee application that has been used by the AOC (AOC-CR-425) to document fee and expense applications. Subsection (a) was amended May 6, 2005 to clarify that attorneys can not double-bill the state for time spent working on multiple cases simultaneously. For all cases finally disposed at the trial level on or after July 1, 2005, the subsection was also amended to require attorneys to submit fee applications to the IDS Director within one year of the date of final disposition. Attorney fee applications submitted more than one year after the date of final disposition will not be paid from state funds. Finally, the subsection was amended to provide that an attorney who was retained to represent a capital defendant can not seek additional compensation from the state.

Subsection (b): In capital cases, recoupment of the cost of court-appointed counsel is governed by G.S. 7A-455. The IDS Act made only one change to that statute. It required that the value of services reflected in a judgment against a defendant be set in accordance with rules adopted by the IDS Office. Since Rule 2A.4(a) authorizes the IDS Director to set fees for counsel and supporting services, this rule requires the IDS Director to notify the defendant of the potential liability and afford the defendant a reasonable opportunity to be heard on the issue, before the trial judge can set the amount of any judgment. The Public Defender is obligated to inform the IDS Director of the value of legal services rendered to the defendant. The form judgment is a revised version of the form that has been used by the AOC (AOC-CR-425).

Subsection (d): Subsection (d) was amended effective September 15, 2006 to clarify that, to avoid any potential for overreaching or the appearance of impropriety, an appointed attorney cannot subsequently accept fees as retained counsel from the client or the client's family. If family or friends of an indigent client want to contribute to non-counsel services, such as expert or support services, nothing in this subsection precludes them from doing so. However, the appointed attorney must place any such funds in his or her trust account and provide an accounting to the contributing family member and the IDS Director. If, during the course of representation as appointed counsel, an attorney learns that a client who was previously determined to be indigent has become financially able to pay for the representation, G.S. 7A-450(d) directs the attorney to inform the court. *But cf.* RPC 52 (Jan. 13, 1989) (directing counsel to "call upon his client to reveal that circumstance to the tribunal" and, if the client refuses to permit disclosure, to move to withdraw). If the court finds that the client is no longer indigent, the appointed attorney may move to withdraw or continue the representation *pro bono*.

Subpart 2B. Appointment and Compensation of Appellate Counsel in Capital Cases.

Rule 2B.3. Compensation and Recoupment.

(a) *Compensation.* Appointed counsel who represented an indigent capital defendant on appeal shall submit to the IDS Director an itemized fee application on a form prescribed by the IDS Director, showing the time counsel spent in appellate representation of the defendant. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to the Administrative Office of the Courts for payment. If counsel is required pursuant to paragraph 2B.4(b)(iii) below to meet with the Appellate Defender or others to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent an indigent capital defendant may apply for and receive interim payments in the discretion of the IDS Director. For all cases finally disposed at the appellate level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director within no more than one year after the date on which the appeal was finally disposed. For all cases finally disposed at the appellate level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director by January 1, 2006. Counsel may make a written request for a review of the amount of compensation determined by the IDS Director from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review.

(b) *Recoupment of Fees Generally.* To the extent required by law, capital defendants for whom counsel has been appointed under this part shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender or appellate defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge shall then determine the amount to be recouped if recoupment is required by law.

(c) *Recoupment for Contract Services.* For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) *Outside Compensation Prohibited.* Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds. (Adopted July 1, 2001; Subsection (d) adopted effective November 12, 2004; Subsection (a) amended May 6, 2005; Subsection (d) amended effective September 15, 2006.)

Subpart 2C. Appointment of Post-Conviction Counsel in Capital Cases.

Rule 2C.3. Compensation and Recoupment.

(a) *Compensation.* Appointed counsel who represented an indigent capital defendant in post-conviction proceedings shall submit to the IDS Director an

itemized fee application on a form prescribed by the IDS Director, showing the time counsel spent in post-conviction representation of the defendant. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to the Administrative Office of the Courts for payment. If counsel is required pursuant to paragraph 2C.4(a)(iv) below to meet with the IDS Director to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent a capital defendant on post-conviction may apply for and receive interim payments in the discretion of the IDS Director. For all cases finally disposed at the post-conviction level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director within no more than one year after the date on which the post-conviction proceedings were finally disposed. For all cases finally disposed at the post-conviction level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director by January 1, 2006. Counsel may make a written request for a review of the amount of compensation determined by the IDS Director from a subcommittee of the IDS Commission designated by the IDS Commission to conduct such review.

(b) *Recoupment of Fees Generally.* To the extent required by law, capital defendants for whom counsel has been appointed under this part shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender or appellate defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge shall then determine the amount to be recouped if recoupment is required by law.

(c) *Recoupment for Contract Services.* For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) *Outside Compensation Prohibited.* Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds. (Adopted July 1, 2001; Subsection (d) adopted effective November 12, 2004; Subsection (a) amended May 6, 2005; Subsection (d) amended effective September 15, 2006.)

PART 3
RULES FOR PROVIDING LEGAL REPRESENTATION IN NON-CAPITAL CRIMINAL APPEALS AND NON-CRIMINAL APPEALS

Rule 3.2. Appointment of Appellate Counsel.

(a1) *Provisional Appointment of the Office of the Appellate Defender to File a Petition for an Extraordinary Writ.* In extraordinary circumstances and in the absence of a court appointment pursuant to paragraph 3.2(b) below, the Appellate Defender may appoint the Office of the Appellate Defender, or an

attorney on the roster of counsel who are qualified and willing to accept appointment to represent persons in the Appellate Division, on a provisional basis to make a preliminary determination of the person's entitlement to appointed counsel in the Appellate Division, and to file a petition for an appropriate extraordinary writ in the Appellate Division.

(a2) *Provisional Appointment of the Office of the Appellate Defender in Proceedings Under Subchapter I of Chapter 7B of the General Statutes.* In the absence of a court appointment pursuant to paragraph 3.2(b) below, when the Appellate Defender is notified by trial counsel of an appealable ruling adverse to the respondent in an action brought under Subchapter I of Chapter 7B of the General Statutes, the Appellate Defender may appoint the Office of the Appellate Defender, or an attorney on the roster of counsel who are qualified and willing to accept appointment to represent persons in the Appellate Division, on a provisional basis to make a preliminary determination of the respondent's entitlement to appointed counsel in the Appellate Division, and to represent the respondent in contemplation of an appeal, or to consult with trial counsel and the respondent on the decision of whether to enter notice of appeal.

(b) *Appointment of the Office of Appellate Defender by the Court.* When a person enters notice of appeal in a case subject to this part and requests appointment of appellate counsel, the trial court shall make a determination of the person's indigency in accordance with Part 1, paragraph 1.4(b) of these rules. In its discretion, the court may rely on a previous determination of indigency. If the court determines that the person is indigent, the court shall appoint the Office of Appellate Defender to represent the person in the Appellate Division, except that, in cases subject to G.S. 122C-270(e) and 122C-289 where the appeal was filed before October 1, 2006, the district court shall appoint as appellate counsel of record the attorney who represented the person in district court. These rules, including provisions relating to standards and compensation, govern all other aspects of appointment of counsel appointed under the foregoing exception.

(c) *Transmittal of Judgment and Forms.* Following the appointment of the Office of Appellate Defender to represent a person in a case subject to this part, the clerk of superior court shall immediately send to the Office of Appellate Defender, by United States mail or by facsimile, a copy of the judgment or decree from which the appeal was taken, as well as any written appellate entries or rulings the court makes with respect to the appeal.

(d) *Assignment of Counsel by the Appellate Defender.* If the Appellate Defender determines that, to insure quality appellate representation, a person's appeal should not be assigned to the Office of Appellate Defender, the Appellate Defender shall assign the person's case to private counsel or a public defender or assistant public defender listed on the roster of qualified appellate counsel maintained by the Appellate Defender pursuant to paragraph 3.4 below and rules approved by the IDS Director. Such counsel is thereafter appellate counsel of record.

(e) *Conflicts.* If the Office of Appellate Defender is appointed to represent a person whose case would create a conflict of interest with a current or previous client of the Office of Appellate Defender, the Appellate Defender shall immediately notify the IDS Director, and the IDS Director shall appoint counsel in the new case pursuant to the rules under which the Appellate Defender would appoint counsel. If the Appellate Defender is appointed to represent co-appellants, the Appellate Defender may appoint the Office of the Appellate Defender to represent a co-appellant and may appoint counsel for the remaining co-appellants so long as the Appellate Defender previously has not undertaken representation of a co-appellant.

(f) *Notice of Assignment and Request for Record.* Following the Appellate Defender's decision to assign an appeal to other counsel, or following the IDS

Director's assignment of counsel in case of a conflict, the assigning authority shall immediately notify assigned counsel of the appointment, and shall also notify the clerk of superior court, the court reporter(s) or other custodian(s) of the recorded proceedings, and the adverse parties of the name, address, and telephone number of assigned counsel. The Office of Appellate Defender shall transmit to assigned appellate counsel a copy of the documents forwarded to the Office of Appellate Defender by the clerk of superior court pursuant to paragraph 3.2(b) above, and shall request that the clerk transmit to assigned counsel the complete file maintained by the clerk in the case.

(g1) *Litigation of Non-Capital Motions for Appropriate Relief Pending Direct Appeal and Assignment of Counsel by the Appellate Defender.* Appellate counsel appointed pursuant to Part 3 of these rules who seeks to be compensated for preparing, filing, or litigating a non-capital Motion for Appropriate Relief ("MAR") pending direct appeal pursuant to G.S. 15A-1418 must obtain prior authorization from the Appellate Defender. If the Appellate Defender declines to authorize MAR litigation, appointed appellate counsel may seek authorization from the IDS Director. After consulting with appointed appellate counsel, the Appellate Defender or IDS Director may appoint one additional counsel to represent the appellant for purposes of preparing, filing, or litigating an MAR. If additional counsel is appointed to prepare, file, or litigate the MAR, that counsel must be on a roster of counsel in some North Carolina jurisdiction who are qualified to represent defendants at trial charged with the highest offense the appellant has appealed, or a higher offense. Compensation of counsel appointed under this subsection shall be governed by Rule 3.3. Appointment and compensation of experts and payment of other expenses related to MAR litigation authorized under this subsection shall be governed by Part 2D of these rules.

(g2) *Evidentiary Hearings on Remand from the Appellate Courts Pending Direct Appeal and Assignment of Counsel by the Appellate Defender.* After consulting with appointed appellate counsel, the Appellate Defender or IDS Director may appoint one additional lawyer to represent the appellant at an evidentiary hearing in the Trial Division on remand from the Appellate Division when the direct appeal is still pending. If additional counsel is appointed for that purpose in a criminal case, that counsel must be on a roster of counsel in some North Carolina jurisdiction who are qualified to represent indigent defendants in the Trial Division charged with the highest offense that is being remanded, or a higher offense. If additional counsel is appointed for that purpose in a case brought under Chapter 7B of the General Statutes, that counsel must be on a roster of counsel in some North Carolina jurisdiction who are qualified to represent indigent persons in the Trial Division in the applicable type of case. Compensation of counsel appointed under this subsection shall be governed by Rule 3.3. Appointment and compensation of experts and payment of other expenses related to litigation at the evidentiary hearing as authorized under this subsection shall be governed by Part 2D of these rules.

(h) *Litigation of Motions to Modify Dispositional Orders Pending Direct Appeal in Juvenile Delinquency Cases and Assignment of Counsel by the Appellate Defender.* Appellate counsel appointed to a juvenile delinquency case pursuant to Part 3 of these rules who seeks to be compensated for preparing, filing, or litigating a motion to modify a dispositional order pending direct appeal pursuant to G.S. 7B-2600 must obtain prior authorization from the Appellate Defender. If the Appellate Defender declines to authorize the litigation, appointed appellate counsel may seek authorization from the IDS Director. After consulting with appointed appellate counsel and the Juvenile Defender, the Appellate Defender or IDS Director may appoint one additional counsel to represent the appellant for purposes of preparing, filing, or litigat-

ing a motion to modify a dispositional order. If additional counsel is appointed to prepare, file, or litigate the motion, that counsel must be on a roster of counsel in some North Carolina jurisdiction who are qualified to represent juveniles in district court delinquency proceedings charged with the highest offense the appellant has appealed, or a higher offense. Compensation of counsel appointed under this subsection shall be governed by Rule 3.3. Appointment and compensation of experts and payment of other expenses related to the motion to modify the dispositional order authorized under this subsection shall be governed by Part 2D of these rules. (Adopted July 1, 2001; Subsection (d) amended effective January 18, 2002; Subsection (f) adopted effective November 15, 2002; New subsection (a1) adopted effective July 9, 2004; New Subsection (g1) adopted effective November 15, 2002; New subsection (g2) adopted effective November 4, 2005; New subsection (h) adopted effective July 8, 2005; New subsection (a2) adopted effective February 10, 2006; Subsection (b) amended effective September 15, 2006 and effective December 8, 2006.)

Commentary:

In all actions and proceedings in which courts previously appointed appellate counsel, the court shall appoint the Office of Appellate Defender.

Subsection (a1): This provision was added in July 2004 to authorize the Appellate Defender to provisionally appoint the Office of the Appellate Defender or a private appellate attorney in certain circumstances. The need for this authority has typically arisen in three types of cases: 1) cases in which the Appellate Defender believes that a trial court has erroneously denied indigency status after a person who the court previously determined was indigent entered notice of appeal, and that a petition for an extraordinary writ should be filed on the person's behalf; 2) cases in which a trial court has determined that a person is indigent but denied appointed appellate counsel, and the Appellate Defender believes that the person has a right to appointed appellate counsel and that a petition for an extraordinary writ should be filed on the person's behalf; and 3) cases in which the Appellate Defender is contacted by appointed trial counsel concerning the need for immediate review of a pre-trial ruling, and the Appellate Defender agrees that the ruling should be challenged in the appellate courts by means of a petition for an extraordinary writ.

Subsection (a2): This provision was added in February 2006 to authorize the Appellate Defender to provisionally appoint the Office of the Appellate Defender or a private appellate attorney on a provisional basis in proceedings brought under Subchapter I of Chapter 7B of the General Statutes. The need for this authority arose when the Supreme Court of North Carolina adopted Rule 3A of the North Carolina Rules of Appellate Procedure, which is designed to expedite appeals in abuse, neglect, or dependency and termination of parental rights cases.

Subsection (b): This subsection was revised in September 2006 to conform with amendments to G.S. 122C-270 and 122C-289 in the 2005 Technical Corrections Act. See S.L. 2006-264. Previously, G.S. 122C-270 and 122C-289 provided that the attorney appointed to represent the respondent in district court was also responsible for perfecting and concluding any appeal. For all civil commitment appeals filed on or after October 1, 2006, S.L. 2006-264 directs that appellate counsel for the indigent respondent shall be appointed in accordance with rules adopted by the IDS Office. As with all other indigent appeals, this subsection was subsequently revised to provide that, for civil commitment appeals filed on or after October 1, 2006, the court shall appoint the Office of the Appellate Defender to represent the respondent. Civil commitment appeals filed before October 1, 2006 continue to be the responsibility of the attorney assigned at the initial district court hearing. This subsection was further revised in December 2006 to clarify that the trial court is the proper body to determine an appellant's indigency and appoint the Office of the Appellate Defender.

Subsection (g1): This provision was added in November 2002 to authorize the Appellate Defender or IDS Director to appoint counsel to litigate a non-capital motion for appropriate relief pending direct appeal.

Subsection (g2): This provision was added in November 2005 to authorize the Appellate Defender or IDS Director to appoint counsel to litigate an evidentiary hearing in the Trial Division on remand from the Appellate Division when the direct appeal is still pending.

Subsection (h): This provision was added in July 2005 to authorize the Appellate Defender or IDS Director to appoint counsel to litigate a motion to modify a juvenile dispositional order in district court pending appeal. G.S. 7B-2600(b) gives the district court authority to reduce the nature or duration of an illegally

imposed disposition order in a juvenile delinquency case.

Rule 3.3. Compensation of Appellate Counsel.

(a) *Setting of Fee.* Assigned private appellate counsel of record shall be compensated in an amount determined by the IDS Director following consultation with the Appellate Defender, except that the IDS Director shall not consult with the Appellate Defender concerning the fee to be paid to counsel assigned pursuant to paragraph 3.2(d) above. If counsel is required pursuant to paragraph 3.4(f)(iii) below to meet with the Appellate Defender to review the representation, the fee shall include compensation for time spent in that review.

(b) *Fee Application.* After a person's appeal becomes final, assigned private counsel shall submit to the Appellate Defender, or to the IDS Director in a conflict case, an itemized fee application on a form prescribed by the Appellate Defender, showing the time counsel spent in appellate representation of the person. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the Appellate Defender shall forward the application to the IDS Director with a recommendation concerning the amount to be paid. The IDS Director shall fix the fee to be paid and forward the award to the Administrative Office of the Courts for payment. For all cases finally disposed at the appellate level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director within no more than one year after the date on which the appeal was finally disposed. For all cases finally disposed at the appellate level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director by January 1, 2006. Assigned private appellate counsel may apply for interim payments.

(c) *Recoupment of Fees Generally.* To the extent required by law, persons who have been appointed counsel under this part shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender or appellate defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the person potentially responsible for paying the fees of the potential liability, and afford the person a reasonable opportunity to be heard on the issue. The trial judge shall then determine the amount to be recouped if recoupment is required by law.

(d) *Recoupment for Contract Services.* For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(e) *Outside Compensation Prohibited.* Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds. (Adopted July 1, 2001; Subsection (e) adopted effective November 12, 2004; Subsection (a) amended May 6, 2005; Subsection (e) amended effective September 15, 2006.)

Commentary:

Subsection (b): The Appellate Defender will make available to counsel a form approved by the Appellate Defender (AOC-CR-426) to docu-

ment fee and expense applications. Subsection (b) was amended effective May 6, 2005 to clarify that attorneys can not double-bill the state for time spent working on multiple cases simultaneously. For all cases finally disposed at the appellate level on or after July 1, 2005, the subsection was also amended to require attorneys to submit fee applications to the Appellate Defender or IDS Director within one year of the date of final disposition. Attorney fee applications submitted more than one year after the date of final disposition will not be paid from state funds.

Subsection (c): In appellate cases, recoupment of the cost of court-appointed counsel is governed by G.S. 7A-455. The IDS Act made only one change to that statute. It required that the value of services reflected in a judgment against a defendant be set in accordance with rules adopted by the IDS Office. Since Rules 3.3(a) and (b) authorize the IDS Director to set fees for appellate counsel, this rule requires the IDS Director to notify the person potentially responsible for paying the fees of the potential liability and afford the person a reasonable opportunity to be heard on the issue, before the trial judge sets the amount of any judgment. The Public Defender and Appellate Defender are obligated to inform the IDS Director of the value of legal services rendered to a defendant. The form judgment is a new form (AOC-CR-426) that is similar to the form previously used by the AOC.

Subsection (e): Subsection (e) was amended effective September 15, 2006 to clarify that, to avoid any potential for overreaching or the appearance of impropriety, an appointed attorney cannot subsequently accept fees as retained counsel from the client or the client's family. If family or friends of an indigent client want to contribute to non-counsel services, such as expert or support services, nothing in this subsection precludes them from doing so. However, the appointed attorney must place any such funds in his or her trust account and provide an accounting to the contributing family member and the IDS Director. If, during the course of representation as appointed counsel, an attorney learns that a client who was previously determined to be indigent has become financially able to pay for the representation, G.S. 7A-450(d) directs the attorney to inform the court. *But cf.* RPC 52 (Jan. 13, 1989) (directing counsel to "call upon his client to reveal that circumstance to the tribunal" and, if the client refuses to permit disclosure, to move to withdraw). If the court finds that the client is no longer indigent, the appointed attorney may move to withdraw or continue the representation *pro bono*.

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LOCAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Revised effective October, 1992,
with amendments through April 16, 2007.

Rule Index follows Rules.

10(d). Renumbered.
25(c). Confidential and Sealed Materials.
30(b). Appendix contents; Number of copies.

Rule 10(d). Renumbered.

Local Rule 10(d) has been renumbered as Rule 25(c), effective April 16, 2007.

Rule 25(c). Confidential and Sealed Materials.

(1) *Certificates of Confidentiality.* At the time of filing any appendix, brief, motion, or other document containing or otherwise disclosing materials held under seal by another court or agency, counsel or a pro se party shall file a certificate of confidentiality.

(A) Record material held under seal by another court or agency remains subject to that seal on appeal unless modified or amended by the Court of Appeals.

(B) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

(i) identify the sealed material;

(ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;

(iii) specify the terms of the protective order governing the information; and

(iv) identify the appellate document that contains the sealed information.

(2) *Motions to Seal.* Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below.

(A) A motion to seal may be filed with the Court of Appeals when:

(i) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;

(ii) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or

(iii) additional material filed for the first time on appeal warrants sealing.

(B) Any motion to seal filed with the Court of Appeals shall:

(i) identify with specificity the documents or portions thereof for which sealing is requested;

(ii) state the reasons why sealing is necessary;

(iii) explain why a less drastic alternative to sealing will not afford adequate protection; and

(B)(iv) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(C) A motion to seal filed with the Court of Appeals will be placed on the public docket for at least 5 calendar days before the Court rules on the motion, but the materials subject to a motion to seal will be held under seal pending the Court's disposition of the motion.

(3) *Filing of Confidential and Sealed Material.*

(A) Appendices: When sealed material is included in the appendix, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix.

(B) Briefs, Motions, and Other Documents: When sealed material is included in a brief, motion,or any document other than an appendix, two versions of the document must be filed:

(i) a complete version under seal in which the sealed material has been distinctively marked and

(ii) a redacted version of the same document for the public file.

(C) Personal Data Identifying Information: Personal data identifying information, such as an individual's social security number, an individual's tax identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, shall be filed in accordance with section 205(c)(3) of the E-Government Act of 2002 and rules adopted thereunder.

(D) Marking of Sealed and Ex Parte Material: The first page of any appendix, brief, motion, or other document tendered or filed under seal shall be conspicuously marked SEALED, and all copies shall be placed in an envelope marked SEALED. If filed ex parte, the first page and the envelope shall also be marked EX PARTE.

(E) Number of Copies: Only 4 copies of a sealed appendix, brief, motion, or other document shall be filed, with 4 copies of the certificate of confidentiality or motion to seal. Unsealed volumes of the appendix and redacted copies of the public brief, motion, or other document shall be filed in conformity with Local Rules 30(b) (appendices); 31(d) (briefs); 27(c) (motions); and 25(a)(2) (other documents).

(F) Responsibility for Compliance: The responsibility for following the required procedures in filing confidential and sealed materials rests solely with counsel and the parties. The clerk will not review each filing for compliance with this rule.

(G) Public Access: Parties must remember that any personal information not otherwise protected by sealing or redaction may be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the Court. (Amended effective May 18, 2004; Renumbered from Rule 10(a) and Amended effective April 16, 2007.)

Rule 30(b). Appendix contents; Number of copies.

In designating or agreeing upon the contents of the appendix, and in assembling the appendix, the parties should avoid unnecessary duplication of materials. The appellee's designation should only include those additional parts of the record to which it wishes to direct the Court's attention that have not already been designated by the appellant.

The use of a selectively abridged record allows the judges to refer easily to relevant parts of the record and saves the parties the considerable expense of reproducing the entire record. Although there is no limit on the length of the appendix except as provided in Local Rule 32(a), it is unnecessary to include everything in the appendix. The appendix should, however, contain the final order or order appealed from, the complaint or petition, as finally amended (civil appeals) or indictment (criminal appeals), as well as all other parts of the record which are vital to the understanding of the basic issues on appeal. Although the entire record is available to the Court should it believe that additional portions are important to a full understanding of the issues, citations to portions of the record not included in the appendix is not favored.

The table of contents to the appendix should be sufficiently detailed to be helpful to the Court. Referring to the transcript of a trial under a single reference to "proceeding" or "trial transcript" is not sufficient. When the testimony of a witness is included in the appendix, the testimony should be clearly identified in the table of contents, beneath the proceeding in which it occurred. The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) should also be clearly indicated at the top of each page of the appendix where the witness's testimony appears. Exhibits should be listed in the table of contents by number or letter and by name or brief description.

In all criminal appeals seeking review of the application of the sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate sealed volume, stamped "SEALED" on the volume itself and on the envelope containing it, and be accompanied by a certificate stating that the volume contains sealed material.

Pursuant to the authority granted by FRAP 30(a)(3), the Court requires that only six copies of the appendix must be filed with appellant's opening brief and a copy served on counsel for each party separately represented. Appointed counsel may file five copies and any party proceeding in forma pauperis who is not represented by Court-appointed counsel may file four copies. If the Court allows a deferred appendix the parties routinely file four page-proof copies of the brief in lieu of the requisite number of copies. After the deferred appendix is filed, the parties must replace their page-proof copies with the requisite number of copies of their final brief, which must contain proper references to the appendix. (Amended effective December 1, 1995; amended effective December 1, 1998; amended effective April 16, 2007.)

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INTERNAL OPERATING PROCEDURES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Revised effective October, 1992,
with amendments received through April 16, 2007.

IOP
47.2. Bar membership in the judicial conference of the circuit.

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IOP 47.2. Bar membership in the judicial conference of the circuit.

Commencing with the 2007 conference, the members of the conference of the bar are as follows:

A. Ex officio members.

1. The Attorney General of the United States, or designee.

2. The presidents of the state bar associations of the states of the Circuit. When two bar associations in the same state are both recognized under this rule, the president of each shall be entitled to attend, and the maximum number of members of the conference from the bar, from any state, under this provision, shall be limited to two. As long as there is only one state bar association in Maryland, the Bar Association of Baltimore City may be treated as a state bar association under this provision.

3. One representative of the federal bar association elected to the Federal Bar Council from the Fourth Circuit, each conference year, on a rotational basis.

4. All United States Attorneys in the Circuit.

5. All Federal Public Defenders in the Circuit.

6. All Community Defenders in the Circuit.

7. All Chief Justices of the courts of last resort of the states comprising this Circuit.

8. All Attorneys General of the states comprising this Circuit.

9. The Chief Judge of the United States Court of Appeals for the Armed Forces.

10. The Chief Judge of the United States Tax Court.

11. One representative of each accredited law school within the Circuit.

B. Members designated by judges.

1. Lawyers who are not permanent members of the conference as set forth under (2) below are invited by the Chief Judge as guests of a scheduled conference upon designation by an active or senior circuit or district judge.

(a) In 2005, the number of designated guests per judge was reduced from two to one, with the reduction phased in to allow guests who had attended a conference prior to 2005 but not yet attained permanent membership to fulfill their attendance requirement.

(b) During the transition period, a judge may designate two guests for invitation only if both guests attended a conference prior to 2005.

(c) If a judge has no designated guests under the transition provision set forth in (b) above, or if a judge decides not to invite the guests designated under (b), a judge may designate one guest for invitation.

2. By attending two conferences as a guest invited under (1) above, a lawyer becomes a permanent member of the conference, entitled to attend all conferences. (Amended effective February 16, 1993; further amended September 25, 1996; further amended August 1, 2005; further amended April 16, 2007.)

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PART IX. GENERAL PROVISIONS

Rule 9011-1. Attorneys — Duties.

CASE NOTES

Duty to Represent Debtor Until Relieved. — In addition to the requirements of the N.C. R. Prof. Conduct 1.3, Bankr. E.D.N.C. R. 9011-1 as enacted by the U.S. Bankruptcy Court for the eastern District of North Carolina, Wilmington Division, require an attorney to remain the attorney of record for all purposes, including the representation of the debtor in all matters that arise in conjunction with the proceeding, until the case is closed or the attorney is relieved upon application and court order. In re Sledge, 352 B.R. 742, 2006 Bankr. LEXIS 2795 (Bankr. E.D.N.C. 2006).

LOCAL RULES OF CIVIL, CRIMINAL, AND BANKRUPTCY PRACTICE OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Revised effective January 17, 2001,
with amendments through November 1, 2006.

Part I. Local Rules of Civil Practice

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LR1.1. Scope and purpose of rules.

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LR5.1. Additional copies for court use.
LR5.2. Filings within three days of scheduled hearings.
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LR47.1. Juries.

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VIII. Provisional and Final Remedies

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LR83.9b. Selection of cases for mediated settlement conferences.
LR83.9c. Mediators.
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LR83.10c. Discipline imposed by another court or by a state bar.
LR83.10d. Disbarment on consent or resigna-

Rule
tion in another court or before a state bar.
LR83.10e. Standards for professional conduct.
LR83.10f. Disciplinary proceedings.
LR83.10g. Disbarment on consent while under disciplinary investigation or prosecution.
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X. General Provisions

LCrR50.1. Prompt disposition of criminal cases.

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LCrR58.1. Payment of fixed sum in lieu of appearance in certain misdemeanor cases.

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PART I. LOCAL RULES OF CIVIL PRACTICE

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule LR1.1. Scope and purpose of rules.

These rules govern practice in the District Court for the Middle District of North Carolina consistent with the Federal Rules of Civil Procedure. These rules shall be interpreted and applied to foster civility in the practice of law before this Court, and to promote the just and prompt determination of all proceedings.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS AND ORDERS

Rule LR5.1. Additional copies for court use.

A paper copy of the following documents shall be delivered to the clerk for use by the court within a reasonable time after the original is filed:
(1) A brief.
(2) Proposed findings of fact and conclusions of law.
(3) Requests for jury instructions.

Rule LR5.2. Filings within three days of scheduled hearings.

A party who files documents which relate to a matter noticed for hearing within the next three business days shall so advise the clerk.

Rule LR5.3. Electronic filing of documents.

Documents may be filed, signed and verified by electronic means to the extent and in the manner authorized by the court's Standing Order regarding Electronic Case Administrative Policies and Procedures and the ECF User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposed of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Rule LR5.4. Service of electronically filed documents.

Documents may be served through the court's transmission facilities by electronic means to the extent and in the manner authorized by the court's Standing Order regarding Electronic Case Administrative Policies and Procedures and the ECF User Manual. Transmission of the Notice of Electronic Filing (NEF) constitutes service of the filed document upon each party in the case who is registered as a Filing User. Any other party or parties shall be served documents according to these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Rule LR6.1. Extensions of time and continuances of hearings.

(a) *Motions for an extension of time to perform an act.* All motions for an extension of time to perform an act required or allowed to be done within a specified time must comply with Fed.R.Civ.P. 6(b) and show prior consultation with opposing counsel and the views of opposing counsel.

(b) *Motions for continuance.* All motions to continue a pretrial conference, hearing on a motion, or the trial of an action must be filed reasonably in advance of the hearing date and must reflect the views of opposing counsel.

III. PLEADINGS AND MOTIONS

Rule LR7.1. Form of pleadings and papers.

(a) *Form.* Pleadings, motions, briefs, and other papers submitted for filing must be typewritten, printed, or legibly handwritten on letter size paper. The pages shall be single-sided and shall be unfolded and bound at the top and numbered at the bottom, without manuscript cover. The margin at the top of each page shall not be less than one and one-quarter inches, and bottom, left and right margins shall be set at not less than one inch. Typewritten documents should be double spaced. Mechanically reproduced copies which bear an original signature will be accepted by the court as originals.

All pleadings, motions and other original papers filed with the Clerk shall be in a fixed-pitch type size no smaller than ten characters per inch or in a proportional font size no smaller than 13 point. There shall be no more than 27 lines of regularly spaced text on a page.

(b) *Personal Data Identifiers.* In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court:

(1) *Social Security Numbers.* If the individual's social security number must be included in a pleading, only the last four digits of that number should be used.

(2) *Names of minor children.* If the involvement of a minor child must be mentioned in a pleading, only the initials of that child should be used.

(3) *Dates of birth.* If the individual's date of birth must be included in a pleading, only the year should be used.

(4) *Financial account numbers.* If financial account numbers are relevant and must be included in a pleading, only the last four digits of the financial account number should be used.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted version of the document under seal, or file a reference list under

seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right. The court may, however, still require a redacted copy for the public file. The redacted version of the document or the reference list shall be retained by the court as part of the record and disposed of in accordance with Local Rule 79.4. Counsel who file personal identifier data under seal should be mindful that the confidentiality of sealed documents transferred to the General Services Administration for holding after the case is closed cannot be assured.

The responsibility for redacting these personal identifiers rests solely with counsel and parties. The Clerk will not review each pleading for compliance with this rule.

(c) *Identification of Documents.* All papers submitted for filing shall follow the heading format set out in the Appendix of Forms, Fed.R.Civ.P.

(d) *Telephone numbers and addresses.* Parties or attorneys signing papers submitted for filing must state their telephone numbers, mailing addresses, e-mail addresses and the N.C. State Bar number of attorneys who are admitted to practice before this court.

(e) *Exhibits to pleadings or papers.* Bulky or voluminous materials should not be submitted for filing with a pleading or paper, or incorporated by reference therein, unless such materials are essential. The court may order any pleading or paper stricken if filed in violation of this rule.

(f) *Civil rights actions by prisoners, 42 U.S.C. § 1983.* All *pro se* complaints filed by state prisoners seeking relief under 42 U.S.C. § 1983 shall be filed with the clerk in compliance with the instructions of the clerk and on appropriate forms which are available without charge in the clerk's office. In each action, an original and one copy of the complaint for the court and one copy of the complaint for each defendant must be provided by the plaintiff. (Amended effective May 1, 2003; Amended effective November 1, 2004; Amended effective November 1, 2006.)

Rule LR7.2. Briefs.

(a) *Contents.* All briefs filed with the court shall contain:

(1) A statement of the nature of the matter before the court.

(2) A concise statement of the facts. Each statement of fact should be supported by reference to a part of the official record in the case.

(3) A statement of the question or questions presented.

(4) The argument, which shall refer to all statutes, rules and authorities relied upon.

(b) *Citation of published decisions.* For purposes of these rules, published decisions include decisions published in widely used reports and electronic databases, specifically including Westlaw and LEXIS. The preferred form of citation is in accordance with The Bluebook, a Uniform System of Citation.

(c) *Citation of unpublished decisions.* Unpublished decisions may be cited only if the unpublished decision is furnished to the court and to opposing parties or their counsel when the brief is filed. Unpublished decisions should be cited as follows: *Wise v. Richardson,* No. C-70-191-S (M.D.N.C., Aug. 11, 1971).

(d) *Citation of decisions not appearing in certain published reports.* Decisions published only in reports other than the West Federal Reporter System, Westlaw, LEXIS, the official North Carolina reports and the official United States Supreme Court reports (e.g., C.C.H. Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services) may be cited only if the decision is furnished to the court and to opposing parties or their counsel when the brief is filed.

Rule LR7.3. Motion practice.

(a) *Form.* All motions, unless made during a hearing or at trial, shall be in writing and shall be accompanied by a brief except as provided in section (i) of this rule. Each motion shall be set out in a separate pleading.

(b) *Content.* All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon, and shall set forth the relief or order sought.

(c) *Decided on motion papers and briefs.*

(1) Motions shall be considered and decided by the court on the pleadings, admissible evidence in the official court file, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the court's attention in the motion or response.

(2) The clerk shall give at least five days' notice of the date and place of oral argument. The court, however, for good cause shown may shorten the five-day notice period.

(d) *Limitations on length of briefs.* Briefs in support of motions and responsive briefs are limited in length to 20 pages, and reply briefs are limited to 10 pages.

(e) *Movant's supporting documents and briefs.* When allegations of facts not appearing of record are relied upon to support a motion, affidavits, parts of depositions, and other pertinent documents then available shall accompany the motion. If supporting documents are not then available, the party may move for an extension of time in accordance with section (g) of this rule.

(f) *Response to motion and brief.* The respondent, if opposing a motion, shall file a response, including brief, within 20 days after service of the motion (30 days if the motion is for summary judgment; see LR56.1(d)). If supporting documents are not then available, the respondent may move for an extension of time in accordance with section (g) of this rule. For good cause appearing therefor, a respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the court may specify.

(g) *Extension of time for filing supporting documents and briefs.* Upon proper motion accompanied by a proposed order, the Court may enter an ex parte order, specifying the time within which supporting documents and briefs may be filed pursuant to sections (e) and (f), if it is shown in writing that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension. If good cause to grant the motion is not apparent upon the face of the motion, the Court may direct that the motion be served upon the opposing party, who shall be allowed 10 days to respond.

(h) *Reply brief.* A reply brief may be filed within 10 days after service of the response. A reply brief is limited to discussion of matters newly raised in the response.

(i) *Suggestion of subsequently decided authority.* As an addendum to a brief, response brief, or reply brief, a suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.

(j) *Motions not requiring briefs.* No brief is required by either movant or respondent, unless otherwise directed by the court, with respect to the following motions: (1) discovery motions in which the parties have agreed to the expedited procedures described in LR37.1(b); (2) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or as

extended by previous orders; (3) to continue a pretrial conference, hearing, or the trial of an action; (4) to add parties; (5) to amend the pleadings; (6) to file supplemental pleadings; (7) to appoint a next friend or guardian *ad litem*; (8) for substitution of parties; and (9) to stay proceedings to enforce judgment. The above motions, while not required to be accompanied by a brief, must state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions must be accompanied by a proposed order.

(k) *Failure to file and serve motion papers.* The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the court, be disregarded and the pending motion may be considered and decided as an uncontested motion. If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

Rule LR7.4. Ex Parte motions.

Unless the related case is already under seal, an ex parte motion shall only be sealed upon specific order of the court. A motion requesting permission to file an ex parte motion under seal shall include the ex parte motion as an attachment. The clerk shall treat the motion to seal and attachment as sealed pending order of the court.

Rule LR16.1. Initial pretrial proceedings.

(a) *Requirement for initial pretrial order.* There shall be an initial pretrial order entered pursuant to the provisions of Fed.R.Civ.P. 16(b) and 26(f) in every civil case, except in:

(1) Social Security cases and other actions for review of administrative decisions;

(2) Prisoner petitions;

(3) Summons or subpoena enforcement proceedings;

(4) Bankruptcy appeals;

(5) Government collection cases and forfeiture proceedings; and

(6) Cases brought by *pro se* plaintiffs.

The above categories of cases are exempted from the timing-and-sequence-of-discovery provisions of Rule 26(d), and the meeting of parties described in Rule 26(f). Category (1), (2), (3), and (4) cases require no pretrial management and are ready for adjudication on the pleadings of the parties, unless the court orders otherwise. Category (5) cases (government collections and forfeitures) shall be governed by a 90-day period of discovery from the filing of answer or other response, with dispositive motions due in accordance with LR56.1. Category (6) cases (brought by *pro se* plaintiffs) shall be governed by a scheduling order entered by the court after an initial pretrial conference, unless the Court determines, in its discretion, that no conference is necessary.

(b) *Meeting of the parties.* Within the time set by Fed.R.Civ.P. Rule 16(b), the clerk shall schedule an initial pretrial conference and give at least thirty (30) days notice thereof. The parties must hold their Fed.R.Civ.P. 26(f) meeting at least 14 days before the scheduled initial pretrial conference and submit to the court their report within 10 days thereafter. The parties may not stipulate out of the Rule 26(f) meeting but must meet to discuss a proposed discovery plan. At the Rule 26(f) meeting, the parties shall discuss:

(1) All matters identified in Rules 16(b) and (c) and 26(f),

(2) The possibility of settlement,
(3) The proper management track for the case under LR26.1,
(4) The timing of any mediated settlement conference under LR16.4 and LR83.9a-g, and the identity of any agreed-upon mediator,
(5) The nature of the documents and information believed necessary for the case,
(6) Issues of burden and relevance and the discoverability of different types of documents,
(7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties, and
(8) The decision of each party whether or not to consent to the trial jurisdiction of a magistrate judge.

The parties shall jointly prepare a Rule 26(f) Report (LR16.2) if they are in agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (LR16.3), setting forth its position on disputed matters. The Reports must be filed with the court within 10 days of the Rule 26(f) meeting.

(c) *Initial pretrial order by conference.* If the parties are unable to reach agreement on a discovery plan and therefore submit separate Rule 26(f) Reports (LR16.3), they shall appear for the scheduled initial pretrial conference. Each party shall personally appear or be represented by an attorney who has full authority to bind the party on the matters for discussion at the conference. After hearing from the parties, the court will enter an initial pretrial order that will control the conduct of the litigation.

(d) *Initial pretrial order upon the Joint Rule 26(f) report.* If the parties reach agreement on a discovery plan and submit a joint Rule 26(f) Report, the court will enter an order on the basis of the proposed plan as submitted or as modified by the court. The court may, on its own motion, modify the plan if it finds in its discretion that the plan provides for an excessive amount of discovery or the parties' selection of a case management track under LR26.1 is unreasonable. The scheduled initial pretrial conference is automatically canceled upon the submission to the court of the joint Rule 26(f) Report.

(e) *Discovery with respect to expert witnesses.* The initial pretrial order, whether based upon a joint Rule 26(f) Report or a conference following the filing of separate reports, shall provide that discovery with respect to experts be conducted within the discovery period established in the case. The order shall set the date on which disclosure of expert information under Fed.R.Civ.P. 26(a)(2) must be made. (Amended effective March 5, 2002; amended effective September 1, 2003; amended effective November 1, 2006.)

Rule LR16.2. Joint Rule 26(f) report (form).

If the parties are in agreement concerning a discovery plan, they shall file a joint report in substantially the following form:

Joint Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on _____ date _____ at _____ place _____ and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The parties propose to the court the following discovery plan:

Discovery will be needed on the following subjects:

(brief descriptions) _____.

Discovery shall be placed on a case-management track established in LR26.1. The parties agree that the appropriate plan for this case (with any

stipulated modification by the parties as set out below) is that designated in LR26.1(a) as:

Standard _____
Complex _____
Exceptional _____

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____.

Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

From Plaintiff(s) by _____

From Defendant(s) by _____

Supplementations under Rule 26(e) are due: (time[s] or interval[s]).

3. Mediation. [For cases selected for mediation under LR16.4 and LR 83.9a-g *et seq.*]

Mediation should be conducted [early] [midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity).

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. Preliminarily, the parties agree to the following schedule for depositions: _____.

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until date to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the court will consider, *inter alia*, whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), or appointment of a master:

(Report any agreements on these matters).

Trial of the action is expected to take approximately ____ days. A jury trial [has] [has not] been demanded.

Date: _____

Signature of parties or counsel
Signature of parties or counsel

Rule LR16.3. Rule 26(f) report (form).

If the parties are unable to agree on a discovery plan, each party shall file a separate report in substantially the following form:

Rule 26(f) Report

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held on date at place and was attended by _____ for Plaintiff(s), and _____ for Defendant(s).

2. Discovery Plan. The undersigned party proposes to the court the following discovery plan:

Discovery will be needed on the following subjects:

(brief descriptions).

Discovery shall be placed on a case-management track established in LR26.1. The undersigned party proposes that the appropriate plan for this case is that designated in LR26.1(a) as:

Standard _____
Complex _____
Exceptional _____

The date for the completion of all discovery (general and expert) is: _____.

Stipulated modifications to the case management track include: _____ .

Reports from retained experts under Rule 26(a)(2) are due during the discovery period:

From Plaintiff(s) by _____

From Defendant(s) by _____

Supplementations under Rule 26(e) should be due: (time[s] or interval[s]).

3. Mediation. [For cases selected for mediation under LR16.4 and LR 83.9a-g, *et seq.*]

Mediation should be conducted [early] [midway] [late] in the discovery period, the exact date to be set by the mediator after consultation with the parties. The parties agree that the mediator shall be (identity).

(If the parties report no agreement, the clerk will select a mediator from the court's panel of mediators.)

4. Preliminary Deposition Schedule. The undersigned proposes the following schedule for depositions: _____ .

The parties will update this schedule at reasonable intervals.

5. Other items.

Plaintiff(s) should be allowed until date to request leave to join additional parties or amend pleadings.

Defendant(s) should be allowed until date to request leave to join additional parties or amend pleadings.

After these dates, the court will consider, *inter alia*, whether the granting of leave would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), or appointment of a master:

(Report any agreements on these matters).

Trial of the action is expected to take approximately ____ days. A jury trial [has] [has not] been demanded.

Date: _____

Signature of parties or counsel

Rule LR16.4. Mediated settlement conferences.

(a) *Mediated settlement conferences during discovery.* In selected civil cases (see section [b] for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with LR83.9a-g. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete. The parties shall discuss the timing of the mediated settlement conference during the Rule 26(f) meeting of the parties.

(b) *Automatic selection by these rules.* Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5)

property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430],(8) securities/commodities/exchange [category 850] and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears pro se are not included within this automatic selection for mediation.

(c) *Exemption from mediated settlement conference.* Any party, or parties jointly, may move for exemption from the requirement for a mediated settlement conference. The court will grant such a request only for good cause. A general assertion that settlement is unlikely or only a remote possibility does not serve as good cause for exemption.

V. DEPOSITIONS AND DISCOVERY

Rule LR26.1. Differentiated case management and discovery.

(a) *Differentiated case management.* Every case in which an initial pretrial order is entered pursuant to LR16.1(b)-(d) shall be assigned, by agreement of the parties (if adopted by the court) or by order of the court, to one of three case-management tracks. (See LR16.2 and 16.3 for forms of the Fed.R.Civ.P. 26(f) report wherein parties advise the court regarding case management tracks.) The three tracks are defined as follows:

(1) *Standard.* Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within four (4) months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 15 in number by each party. Depositions are presumptively limited to four (4) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(2) *Complex.* Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within six (6) months from the date of the initial pretrial order, subject to agreement of the parties for a larger discovery period, if approved by the court. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 25 in number by each party. Depositions are presumptively limited to seven (7) depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants.

(3) *Exceptional.* Discovery (including all discovery with respect to experts) in cases assigned to this track shall be completed within nine (9) months from the date of the initial pretrial order. Presumptively, subject to stipulation of the parties or order of the court on good cause shown, interrogatories (including subparts) and requests for admission are limited to 30 in number by each party. Depositions are presumptively limited to 10 depositions (including any experts) by the plaintiffs, by the defendants, and by third-party defendants. This management track is reserved for cases of exceptional complexity. It is not to be used for ordinary federal cases even though such cases have some complexity and require significant discovery.

(b) *Discovery procedures and materials.*

(1) The court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. As a part of their Rule 26(f) Report, the parties must formulate a preliminary deposition schedule. They must continue to communicate throughout the discovery period to update the schedule.

(2) Interrogatories, requests for production of documents, or requests for admission shall be numbered consecutively by each party regardless of the number of sets into which they are divided.

(3) Initial disclosures, disclosures of expert testimony, depositions and deposition notices, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless the court so orders or unless the court will need such documents in a pretrial proceeding. All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material which has not been filed with the clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

(c) *Completion of discovery.* The requirement that discovery be completed within a specified time means that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced, and for depositions to be held within the discovery period.

(d) *Extension of the discovery period or request for more discovery.* Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the initial pretrial order must be made or presented prior to the expiration of the time within which discovery is required to be completed. They must set forth good cause justifying the additional time and will be granted or approved only upon a showing that the parties have diligently pursued discovery. The court will permit additional depositions only on a showing of exceptional good cause.

(e) *Trial preparation after the close of discovery.* For good cause appearing therefor, the physical or mental examination of a party may be ordered at anytime prior to trial. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear at trial, but who later becomes unable or refuses to attend,may be ordered at any time prior to trial.

Rule LR30.1. Conduct of depositions.

Depositions shall be conducted in accordance with the following guidelines:

(1) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

(2) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.

(3) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.

(4) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

Rule LR37.1. Motions to compel discovery.

(a) *Conference of attorneys with respect to motions and objections relating to discovery.* The court will not consider motions and objections relating to discovery unless moving counsel files a certificate that after personal consul-

tation and diligent attempts to resolve differences the parties are unable to reach an accord. The certificate shall set forth the date of the conference, the names of the participating attorneys, and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the court location where the initial pretrial conference was convened or, in the absence thereof, nearest to Greensboro. Alternatively, at any party's request, the conference may be held by telephone.

(b) *Expedited resolution of some discovery disputes.* If, after a LR37.1(a) conference, the parties agree that a discovery dispute can be ruled upon in a telephone conference of no more than 30 minutes, the magistrate judge will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, the magistrate judge will schedule an early hearing. The fact that these proceedings are expedited and without briefing does not alter the application of Fed.R.Civ.P. 37(a)(4) and subsection (e) of this rule regarding the imposition of sanctions in discovery motions.

VI. TRIALS

Rule LR40.1. Trial dates and final pretrial preparation.

(a) *Establishment of trial date.* While the case is in discovery, the clerk shall establish a trial date and give at least 4 months' notice thereof to the parties. The case may be set on a trial calendar of the assigned judge or placed on a master calendar to be called by one or more district judges. A magistrate judge may assist with the master calendar, although no case may be referred to the magistrate judge for trial unless the parties consent to the magistrate judge's trial jurisdiction.

(b) *Continuance of trial.* The court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

(c) *Final pretrial preparation.* The parties shall comply in all respects with Fed.R.Civ.P. 26(a)(3) regarding final pretrial disclosure, including the time requirements set out therein. Additionally, no later than 20 days before trial, each party shall file a trial brief, along with proposed instructions on the issues (jury cases) or findings of fact and conclusions of law (non-jury cases). Any party, or the court on its own motion, may request a pretrial hearing or telephone conference to address matters relating to final pretrial preparation or settlement of the case. At any settlement conference, the court may require the attendance of parties and insurers.

Rule LR47.1. Juries.

(a) *Examination of jurors.*

(1) The court will conduct the examination of prospective jurors.

(2) When the court's examination is completed, attorneys and parties appearing pro se may request that the court ask additional questions to the prospective jurors.

(b) *Contacts prohibited.*

(1) All parties, witnesses, and attorneys shall avoid any extra-judicial contact or communication with a grand juror or member of a petit jury venire or panel who has been or may be selected in a case in which that person is involved. No person may have any extra-judicial contact or communication, either directly or indirectly, with a grand juror, member of a petit jury venire

or panel which may reasonably have the effect of influencing, or which is intended to influence, the grand juror, potential petit juror, or sitting petit juror.

(2) Attorneys for parties shall inform their clients and witnesses of this rule.

(3) No person shall approach a juror, either directly or through any member of his immediate family, in an effort to secure information concerning the juror's background.

(4) No provision of this rule is intended to prohibit communication with a petit juror after the juror has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

(c) *Disclosure of names and addresses of prospective jurors.*

(1) The names of prospective jurors for any session of court or for a specific case may not be disclosed prior to their reporting for duty except in compliance with instructions of the court. The clerk will make available to counsel for the parties, and to any parties appearing *pro se,* a list which sets forth the name, general address, and occupation of each potential juror when court is opened for the session for which the jurors have been summoned.

(2) The names, address, and telephone numbers of persons who have served as jurors may not be disclosed by the clerk's office without court permission.

VII. JUDGMENT

Rule LR54.1. Taxation of costs.

(a) *Filing bill of costs.*

(1) A prevailing party may request the clerk to tax allowable costs in a civil action as a part of a judgment or decree by filing a bill of costs, on a form available in the clerk's office, within 30 days.

(i) after the expiration of time allowed for appeal of a final judgment or decree, or

(ii) after receipt by the clerk of an order terminating the action on appeal.

(2) The original of the bill of costs shall be filed with the clerk, with copies served on adverse parties.

(3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

(b) *Objections to bill of costs.*

(1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, that party must state objection in a motion for disallowance with a supporting brief within 10 days after the filing of the bill of costs. Within five days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.

(2) A party may request review of the clerk's ruling by filing a motion within five days after the action of the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(c) *Taxable costs.*

(1) Items normally taxed include, without limitation:

(i) Those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's attendance fee and charge for one transcript of the deposition.

(ii) Premiums on required bonds.

(iii) Actual mileage, subsistence, and attendance allowances for necessary witnesses at actual cost, but not to exceed the applicable statutory rates, whether they reside in or out of this district.

(iv) One copy of the trial transcript for each party represented by separate counsel.

(2) Items normally not taxed include, without limitation:

(i) Witness fees, subsistence, and mileage for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties.

(ii) Daily copy of trial transcripts, unless prior court approval has been obtained.

(d) *Costs in settlements.* The court will not tax costs in any action terminated by compromise or settlement. Settlement agreements must resolve any issue relating to costs. In the absence of specific agreement, each party will bear its own costs.

(e) *Payment of costs.* Costs are to be paid directly to the party entitled to reimbursement, who must file a certificate of satisfaction within 20 days of receipt of payment.

VIII. PROVISIONAL AND FINAL REMEDIES

Rule LR67.1. Registry funds.

(a) *Deposit with the Treasury.* Unless otherwise ordered by the court, the clerk shall deposit registry funds in the Treasury of the United States.

(b) *Investments in income-earning account.* Upon motion or upon consent of the parties, the court may order the clerk to invest certain registry funds in an income-earning account. The order may issue upon a consent request of the parties or upon motion by an interested party, in accordance with the following procedures:

(1) A consent request must demonstrate the assent of all interested and potentially interested parties. The agreement must demonstrate that the investment will be in compliance with applicable provisions of the law regulating the investment of public monies, provide for proper disposition of future earnings, and set out with particularity the following information:

(i) the form of deposit;

(ii) the amount to be invested;

(iii) the type of investment to be made by the clerk of court; i.e., passbook savings, insured money fund, CD, etc.;

(iv) the name and address of the private institution where the deposit is to be made;

(v) the rate of interest at which the deposit is to be made, if possible;

(vi) the length of time the money should be invested, whether it should automatically be reinvested, etc., keeping in mind that some investments include a penalty for early withdrawal;

(vii) the name and address of the designated beneficiary or beneficiaries;

(viii) the form of additional collateral to be posted by the private institution in the event that the standard F.D.I.C. coverage is insufficient to insure the total amount of deposit; and

(ix) such other information that may be deemed appropriate under the facts and circumstances of the particular case.

The consent request shall be accompanied by a proposed order directing the clerk to proceed with the investment.

(2) A motion may be filed *ex parte* by an interested party, and the court may enter an order in advance of the filing of any response thereto. The motion must set forth the showings required in subsection (b)(1) concerning the investment and must include a proposed order. The motion must be served on all known interested parties who do not join therein. The court may determine the motion upon the record or may, in its discretion, call for a hearing on the

matter. If an order is entered prior to the filing of a response in opposition, the motion will be reconsidered by the court.

(3) When an order is issued to invest or reinvest registry funds into some form of interest-bearing account or accounts, the party presenting the order shall deliver a copy of said order either personally, or by certified mail, return receipt requested, to the Clerk, or in his absence, the Chief Deputy Clerk or the Financial Deputy. Further, it shall be incumbent upon the presenting party to confirm that the appropriate action has been accomplished by the Clerk in accordance with the provisions of the particular order.

(4) The clerk of court shall deduct from the income earned the fee specified in 28 U.S.C. § 1914 for deposit to the credit of the Judiciary, without order of the court.

IX. SPECIAL PROCEEDINGS

Rule LR72.3. Stay of order.

Application for stay of a magistrate judge's order pending review of objections made thereto must first be made to the magistrate judge.

Rule LR73.1. Consent to civil trial jurisdiction.

(a) *Consent to exercise of civil trial jurisdiction.*

(1) The consent of a party to the exercise of civil trial jurisdiction authorized in 28 U.S.C. § 636(c)(1) may be communicated to the clerk by letter, or by a form available in the clerk's office, signed by the party or the party's attorney, or by any other manner provided for by law.

(2) The consent of a party will be placed in the public court file only when the court has ordered the case referred to a magistrate judge.

(b) *Withdrawal of consent.* After a case has been referred, the consent of the parties to the exercise of a magistrate judge's jurisdiction may not be withdrawn without the approval of the district judge who signed the order of reference.

(c) *Reference discretionary.* Reference of a case to a magistrate judge after consent of all parties is within the discretion of the court.

X. DISTRICT COURTS AND CLERKS

Rule LR77.1. Court schedule and conduct of business.

(a) *Headquarters.* The headquarters of the court shall be located in Greensboro. All paper documents submitted for filing shall be delivered to the clerk in Greensboro, except that papers may be filed in open court in any court location when permitted by a judge.

(c) *Scheduling.* Conferences, hearings, and trials will be scheduled by the court or by the clerk at the court's direction. All sessions of court will commence at 9:30 a.m. unless otherwise announced.

(c) *Naturalization.* Petitions for naturalization will be considered by the court at Greensboro, North Carolina, on Fridays after the third Mondays in February, May, August, and on the Friday before Thanksgiving in November. In its discretion, the court may at other times consider petitions for naturalization when made by members of the armed services, seamen on merchant vessels registered under the laws of the United States, members of the immediate families and dependents of such personnel, or other persons in exceptional circumstances.

Rule LR77.2. Orders and judgments grantable by clerk.

(a) *Orders and judgments.* The clerk is authorized to grant the following orders and judgments without direction by the court:

(1) Upon a showing of good cause, consent orders in civil actions for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to answer or otherwise plead.

(2) Upon a showing of good cause, consent orders in social security administrative review cases for extending for not more than 30 days (plus an additiona 30 days in exceptional circumstances) the time within which to file dispositive motions.

(b) *Clerk's action reviewable.* The actions of the clerk may be suspended, altered, or rescinded by the court upon cause shown.

Rule LR79.1. Access to court records.

(a) *Access.* The public records of the court are available for examination in the clerk's office during normal business hours.

(1) No file, pleading, paper, or index card may be removed from the clerk's office without the approval of a judge.

(2) When removal of a file or document is authorized, the clerk will set a date for its return and will require a written receipt for its release.

(b) *Copies.* The clerk will make and furnish copies of official court records upon request and upon payment of prescribed fees. The official court record for documents filed prior to March 1, 2005 consists of items filed on the right side of the case folder; items filed on the left side of the case folder, while available for public examination, may not be copied without the written approval of a judge. Requests for copies of items filed on the left side of the case folder must be submitted in writing to the clerk of court, who will refer the matter to the appropriate judge and advise the requester of the judge's decision. For documents filed on or after March 1, 2005, the CM/ECF electronic documents are the official court record.

Rule LR79.3. Administrative records in social security cases.

Administrative records and transcripts in Social Security cases and transcripts or voluminous exhibits in other administrative proceedings will be returned to counsel at conclusion of action.

Rule LR79.4. Custody and disposition of trial exhibits, sealed documents, and filed depositions.

(a) *Custody with the clerk.* Unless otherwise directed by the court, all trial exhibits admitted into evidence in criminal and civil actions shall be placed in the custody of the clerk, except as provided in section (b) below.

(b) *Custody with the offering party.* All exhibits not suitable for filing and transmission to the court of appeals as a part of a record on appeal shall be retained in the custody of the party offering them, subject to the orders of the court. Such exhibits shall include, but not be limited to, the following types of bulky or sensitive exhibits: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight.

At the conclusion of a trial or proceeding, the party offering such exhibits shall retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody shall make such

exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the appellate court, if required.

(c) *Disposition of exhibits, sealed documents, and filed depositions by clerk.* Any exhibit, sealed document, disk, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired, or an appeal has been decided and mandate received, may be returned to the parties or destroyed by the clerk. Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

(d) *Depositions.* Depositions read into the court record are considered exhibits for which the parties shall be responsible as provided in section (b) above. Depositions on file admitted into evidence but not read into the record shall be retained in the clerk's custody and disposed of as authorized in section (c) of this rule.

XI. LOCAL CIVIL RULES FOR WHICH THERE ARE NO CORRESPONDING FEDERAL RULES

Rule LR83.1. Attorneys.

(a) *Roll of attorneys.* The bar of this court shall consist of those attorneys admitted to practice before this court.

(b) *Eligibility and admission.* To be eligible for admission to the bar of the court, a person must be admitted to the practice of law in this state and in good standing with the Supreme Court of North Carolina. A judge will consider a request for admission only upon motion made in open court by a member of the bar of this court. Prior to being admitted to practice, an attorney must certify, on the application for admission to practice form provided for use in this court, that the attorney has read and is familiar with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this Court, and the North Carolina Code of Professional Responsibility. Attorneys seeking admission to practice in this court must take an oath or make an affirmation in a form approved by the court and pay the filing fee required by the Administrative Office of the United States Courts for admission to practice in this district. When the application form prescribed for use by this court is completed and the appropriate filing fee has been paid to the Clerk of Court of this court, a judge or magistrate judge of the Eastern or Western Districts of North Carolina, upon being presented evidence that the above-mentioned application has been filed and that the requisite fees have been paid, may admit an attorney who is qualified according to these rules to practice before this court. Attorneys already admitted to the bars of either the United States District Court for the Eastern District of North Carolina or the United States District Court for the Western District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by this rule, together with a copy of the order admitting the attorney to practice in either of the aforementioned districts.

(c) *Litigants must be represented by a member of the bar of this court.*

(1) Litigants in civil and criminal actions and parties in bankruptcy proceedings before this court, except parties appearing *pro se*, must be represented by at least one attorney who is a member of the bar of this court. Federal government attorneys representing the interests of the United States are not required to secure local counsel. The service of all pleadings and papers

permitted by the Federal Rules of Civil and Criminal Procedure shall be sufficient if made upon such attorney.

(2) All pleadings and papers presented to the clerk for filing, except by attorneys representing governmental agencies or parties appearing *pro se,* shall be signed by a member of the bar of this court.

(d) *Special appearance.*

(1) Attorneys who are members in good standing of the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By entering an appearance, an attorney agrees that:

(i) the attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings; and that

(ii) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation for which the attorney is specially appearing.

(2) A member of the bar of this court who accepts employment in association with a specially appearing attorney is responsible to this court for the conduct of the litigation or proceeding and must sign all pleadings and papers, except for certificates of service. Such member must be present during pretrial conferences, potentially dispositive proceedings, and trial.

(e) *Withdrawal of appearance.* No attorney who has entered an appearance in any civil or criminal action shall be permitted to withdraw an appearance, or have it stricken from the record, except on order of the court or when the attorney has provided notice of substitution of counsel by an attorney who is a member of the withdrawing attorney's law firm.

Rule LR83.2. Courtroom practices.

(a) *Addressing the court.* Attorneys or litigants shall rise when addressing the court, and shall make all statements to the court from behind the counsel table or the lectern facing the court. They shall not approach the bench, except upon the permission of the court.

(b) *Questioning witnesses.* While questioning witnesses, attorneys or *pro se* litigants shall remain seated or standing behind the counsel table or standing at the lectern. They shall not approach the witness except for the purpose of examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

Rule LR83.5. Disposition of private property.

(a) *Disposition.* Whenever, during the course of an investigation, a trial of any action, or any other proceeding in this court, money, contraband, or other private property comes into the possession or custody of a law enforcement officer or an officer of the court, which will require an order of this court to determine its ownership or proper disposition, it is the responsibility of the attorney representing the party having original custody or control of such property to apply to the court for an order determining its ownership and directing its disposition.

(1) This application must be made before the conclusion of responsible the litigation while all parties are before the court in person or through their attorneys.

(2) If the court cannot determine ownership or the proper disposition on the basis of the record or information from the parties before it, application must be made for an order providing for temporary custody pending institution of appropriate civil proceedings to determine final ownership or disposition.

(b) *Sanctions.* The court may impose sanctions as provided in LR83.4 against any party or attorney whose failure to comply with this rule necessitates a subsequent hearing or court proceeding which would otherwise not have been necessary.

Rule LR83.6. Claim of unconstitutionality; three-judge courts.

(a) *Notification.* If at any time prior to the trial of an action to which (1) neither the United States nor any of its officers, agencies, or employees is a party and a party draws in question the constitutionality of an act of Congress affecting the public interest, or (2) neither the state nor any of its agencies, officers, or employees is a party and a party draws in question the constitutionality of any statute of that state affecting the public interest, that party, to enable the court to comply with 28 U.S.C. § 2403, shall notify the court. The notice shall be in writing, stating the title of the action, the statute in question, and the respects in which it is claimed the statute is unconstitutional, and a copy shall be served upon the Attorney General of the United States and the United States Attorney in this district or the North Carolina Attorney General, as applicable.

(b) *Additional copies.* In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings, papers, and documents filed subsequent to the designation of the court, as provided in 28 U.S.C. § 2284(a), shall be filed in triplicate, original and two copies, with the clerk. The clerk shall make timely distribution of these documents to the designated judges.

Rule LR83.7. Photographs, recordings, and broadcasts.

Radio or television broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment without court permission is prohibited in courtrooms or their environs. "Environs" is defined to mean the courtrooms, the offices of the judges, clerk, probation officers, or any corridor connecting or adjacent thereto. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the court, naturalization, and presentation of portraits, may be photographed in or broadcast from the courtroom under the supervision of the court. This rule does not apply to courtroom proceedings by other government agencies.

Rule LR83.8. Courtroom security.

The United States Marshal or a Court Security Officer shall be present at all proceedings held in open court, unless otherwise ordered by the court.

Rule LR83.9a. Purpose of mediated settlement conferences.

These rules govern reference of selected civil actions for mediated settlement conferences. Their purpose is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute. The rules are not intended to force settlement upon any party. The rules shall be construed to secure the speedy, fair, and economical resolution of controversies while preserving the right of all parties to a conventional trial.

Rule LR83.9b. Selection of cases for mediated settlement conferences.

(a) *Automatic selection by these Rules.* Several categories of civil cases are automatically selected for mediated settlement conferences, without specific

order by the court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.ncmd.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed.R.Civ.P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. *See* LR16.1(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears *pro se* are not included within this automatic selection for mediation.

(b) *Discretionary selection by the court.* In its discretion, the court may order a mediated settlement conference in any action not automatically selected under section (a), above. After entry of such an order, the parties shall have 20 days to file a statement identifying an agreed-upon mediator.

(c) *Stipulated selection by the parties.* In any case where selection for a mediated settlement conference is not automatic under section (a) of this rule, the parties may file a stipulation for mediation. In such stipulation, the parties may state any agreements they have reached regarding the identity of the mediator, the timing of the conference, and any modification of the procedures described by these rules.

(d) *Exemption from mediation.* Any party, or parties jointly, may file a motion for exemption from mediation. Such a motion will be granted only on a showing of good cause. A general assertion that a case is not likely to settle or that settlement possibilities are remote does not constitute good cause.

Rule LR83.9c. Mediators.

(a) *Certification.* The clerk shall maintain a list of mediators who have agreed to serve under these rules. The list shall identify areas of subject matter expertise of each mediator according to the categories identified in LR83.9b(a) and include such biographical information as each mediator may wish to provide. Attorneys who have been certified as mediators pursuant to the rules of the North Carolina Supreme Court and who have at least 8 years of civil trial practice or membership on the faculty of an accredited law school may serve on the panel of mediators. Further, attorneys who were on the court's panel of arbitrators as of December 1, 1993 may serve on the panel of mediators. Appointment to the list does not guarantee any mediator that he or she will be appointed to serve in any case before the court.

(b) *Compensation of mediators.* All mediators under these rules, whether agreed upon by the parties or selected by the clerk, shall be compensated by the parties at the hourly rate set by the Chief Judge, except that the court may permit a higher compensation rate to an agreed-upon mediator on joint application by the parties and a showing that the case involves extraordinary complexities. The parties shall make payment directly to the mediator at the termination of the mediated settlement conference, whether or not the case is settled. The mediator shall be compensated for up to 2 hours of preparation time and for the time expended in the conference. The only compensable expense of the mediator is travel mileage at the ordinary government rate. The mediator's fee and travel expense shall be paid in one equal share by the plaintiff (or plaintiffs), one equal share by the defendant (or defendants), and one equal share by any third party (or parties), unless otherwise agreed by all parties or ordered by the court in the interest of fairness.

(c) *Compensation of mediators when a party is unable to pay.* If a party contends it is unable to pay its share of the mediator's fee, that party shall,

before the conference, file a motion with the court to be relieved of the obligation to pay. The motion shall be accompanied by an affidavit of financial standing. The mediated settlement conference should proceed without payment by the moving party, and the court will rule on the motion upon completion of the case. The court will take into consideration the outcome of the case, whether by settlement or judgment, and may relieve the party of its obligation to pay the mediator if payment would cause a substantial financial hardship. If the party is relieved of its obligation, the mediator shall remain uncompensated as to that portion of his or her fee, a circumstance that reflects the mediator's duty of *pro bono* service.

Rule LR83.9d. Selection of the mediator.

(a) *Selection by agreement.* The parties are encouraged to select their own mediator by agreement. If, within 20 days of the initial pretrial order, the parties file with the clerk a statement identifying an agreed-upon mediator, such statement shall be effective to select the mediator, and the clerk will notify the mediator of his or her selection. The parties may select an agreed-upon mediator who is not on the clerk's list of certified mediators, but any such mediator must, prior to service, agree to be bound by all provisions of these rules.

(b) *Selection by the clerk.* If no timely statement pursuant to section (a) of this rule is filed, the clerk shall appoint a mediator from the certified list. The appointment is within the discretion of the clerk, who may consider subject matter expertise in making the appointment. The clerk shall give notice of the appointment to the mediator and the parties.

(c) *Disqualification.* On motion made to the court not later than 20 days before a scheduled mediated settlement conference, a mediator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. §144. Further, a mediator shall disqualify himself or herself if the mediator could be required to do so under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge.

(d) *Copies of the pleadings.* On request of the mediator, the clerk shall furnish to the mediator a copy of the complaint, answer, and any third-party pleadings in the action.

Rule LR83.9e. Procedures for mediated settlement conferences.

(a) *Time period for the mediated settlement conference.* The mediated settlement conference shall be held during the discovery period unless the court specifically orders otherwise.

(b) *Scheduling the mediated settlement conference.* The mediated settlement conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediated settlement conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties.

(c) *Submission of position papers to mediator.* No later than five (5) business days before the scheduled date of the mediated settlement conference, any party may submit a confidential position paper to the mediator. The position paper shall be limited in length to five (5) pages, double-spaced, and may be accompanied by up to five (5) pages of exhibits. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of

additional information if they believe the information will facilitate the mediated settlement conference.

(d) *Duties of parties, representatives, and attorneys.* The following persons shall be physically present at the entire mediated settlement conference unless excused by the mediator:

(1) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or recommend a settlement;

(2) At least one attorney of record for each represented party; and

(3) A representative of the insurance carrier for any party against whom a claim is made. The representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

Upon reaching a settlement agreement at a mediated settlement conference, the parties shall forthwith reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the court.

(e) *Authority of the mediator.* The mediator is authorized by these rules to exercise control over the mediated settlement conference and to direct all proceedings therein. The mediator is specifically authorized to meet or consult privately with any party or their counsel during the conference. The mediator may report in writing to the court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediated settlement conferences.

(f) *Duties of the mediator.* At the beginning of the mediated settlement conference, the mediator shall describe the following matters to the parties:

(1) The process of mediation,

(2) The differences between mediation and other forms of conflict resolution,

(3) The costs of the mediated settlement conference,

(4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement,

(5) The circumstances under which the mediator may meet alone with either of the parties or any other person,

(6) The conditions under which communications with the mediator will be held in confidence during the conference,

(7) The inadmissibility of negotiating statements and offers at trial,

(8) The fact that the court will not permit parties in other litigations to conduct discovery regarding the mediation in this case,

(9) The duties and responsibilities of the mediator and the parties, and

(10) The fact that any agreement reached will be reached by mutual consent of the parties.

The mediator may recess or suspend the conference at any time and set a schedule for reconvening. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. He shall then inform the parties that mediation is terminated.

(g) *Agreements to modify mediation procedures.* By agreement filed with the court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or order of the court.

(h) *Sanctions for failure to appear.* If a person fails to attend a mediated settlement conference without good cause, the court may impose on that person (or any associated party) any lawful sanction, including, but not limited to, the imposing of the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

Rule LR83.9f. Completion of the mediated settlement conference.

When the mediated settlement conference is completed, the mediator shall immediately submit to the clerk a report of the status of the case, on a form

supplied by the clerk. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the court in accordance with the local rules of the court.

Rule LR83.9g. Evaluation of the mediation program.

The mediation program established by these rules is experimental in nature and will be periodically reviewed by the court. For purposes of evaluation of the program, the mediator, the attorneys, and the litigants may be requested to complete confidential evaluation reports at the completion of the mediation. These reports shall be kept confidential by the clerk and shall be maintained in a file separate and apart from the case file. The clerk shall compile information from the evaluation reports to assist the court in determining the effectiveness of the mediation program.

Rule LR83.10a. Purpose of disciplinary rules.

The court, in furtherance of its inherent power and responsibility to supervise attorneys who practice before it, adopts these rules of disciplinary enforcement.

Rule LR83.10b. Attorneys convicted of a crime.

(a) *Suspension upon filing of judgment.* Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney practicing before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as herein defined, the court may enter an order immediately suspending that attorney from practice until final disposition of a disciplinary proceeding before this court, or until final disposition is made by the appropriate state bar.

(b) *Definition of serious crime.* "Serious crime" shall include any felony and also any other crime which involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

(c) *Conviction of serious crime.* Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court may refer the matter to counsel for institution of a disciplinary proceeding before the court, providing that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded. Alternatively, the court may refer the matter to the appropriate state bar.

(d) *Conviction of other crime.* Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court. Alternatively, the court may refer the matter to the appropriate state bar. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.

(e) *Reinstatement after suspension.* An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

Rule LR83.10c. Discipline imposed by another court or by a state bar.

(a) *Duty to inform the clerk.* Any attorney practicing before this court shall, upon being subjected to public discipline by any court or by the state bar of any state, promptly inform the clerk of such action.

(b) *Show cause order.* Upon the filing of a certified copy of a judgment or order demonstrating that an attorney has been disciplined by another court or by a state bar, this court shall forthwith issue a notice containing a copy of the judgment or order and an order to show cause directing that the attorney inform this court within 20 days why imposition of the identical discipline by this court would be unwarranted and the reasons therefor.

(c) *Imposition of discipline.* Upon expiration of 20 days from service of the show cause order, this court will presume the misconduct to have been established and will impose the identical discipline unless the attorney demonstrates that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(1) that the attorney was deprived of due process; or

(2) that there was such an infirmity of proof that this court could not accept as final the conclusion on that subject; or

(3) that the imposition of the same discipline by this court would result in grave injustice; or

(4) that the misconduct established is deemed by this court to warrant substantially different discipline. Where this court determines that any of said elements exist, it shall enter such order as it deems appropriate. The grant of a stay of discipline by the other jurisdiction shall constitute grounds for a similar grant by this court.

Rule LR83.10d. Disbarment on consent or resignation in another court or before a state bar.

Any attorney practicing before this court who shall be disbarred on consent or resign from the bar of any court or state while an investigation into allegations of misconduct is pending, shall promptly inform the clerk, and upon the filing with this court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, shall cease to be permitted to practice before this court.

Rule LR83.10e. Standards for professional conduct.

(a) *Disciplinary enforcement.* For misconduct defined in these rules, and after notice of an opportunity to be heard, any attorney practicing before this court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(b) *Standards for conduct.* Acts or omissions by an attorney practicing before this court which violate the Code of Professional Responsibility adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this court.

Rule LR83.10f. Disciplinary proceedings.

(a) *Referral of complaints to counsel or to a state bar.* When allegations of misconduct by an attorney practicing before this court come to the attention of a judge of this court, whether by complaint or otherwise, the judge may refer

the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Alternatively, the judge may refer the matter to the appropriate state bar. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.

(b) *Recommendation by counsel.* Should counsel conclude after investigation that a formal disciplinary proceeding should not be initiated against the attorney, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, or deferral and shall set forth the reasons for such recommendation.

(c) *Initiation of disciplinary proceedings.* To initiate formal disciplinary proceedings, counsel shall obtain an order of the court upon a showing of probable cause requiring the attorney to show cause within 20 days after service of the order why the attorney should not be disciplined.

(d) *Hearing.* Upon the attorney's answer to the order to show cause, if any issue of fact is raised or the attorney wishes to be heard, the court shall set the matter for prompt hearing.

Rule LR83.10g. Disbarment on consent while under disciplinary investigation or prosecution.

(a) *Consent to disbarment.* Any attorney practicing before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely given,

(2) the attorney is aware of the pending investigation or proceeding,

(3) the attorney acknowledges the material facts of misconduct, and

(4) the attorney consents because the attorney knows that he or she could not defend successfully against charges of misconduct.

(b) *Order of disbarment.* Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

(c) *Record.* The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

Rule LR83.10h. Reinstatement.

(a) *Automatic reinstatement; Reinstatement by order.* An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the suspension order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.

(b) *Time for petition.* An attorney who has been disbarred after hearing or by consent may not petition for reinstatement until the expiration of at least 5 years from the effective date of disbarment.

(c) *Procedure.* Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the court. Upon receipt of the petition, the chief judge shall assign the matter for a prompt hearing before a judge (or judges) of the court and may, in the chief judge's discretion, refer the petition to counsel for investigation. The judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency, and learning of the law required for admission to practice

law before this court, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive of the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel if the matter has been referred to counsel by the court.

(d) *Costs.* Petitions for reinstatement under this rule shall be accompanied by an advanced cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(e) *Order of reinstatement.* If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further that if the petitioner has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the judge, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of North Carolina of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(f) *Successive petitions.* No petition for reinstatement under this rule shall be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule LR83.10i. Attorneys specially appearing.

Whenever an attorney appears for purposes of a particular proceeding, the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in preparation for such proceeding.

Rule LR83.10j. Service of papers and other notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney or to the attorney's counsel and is posted by regular mail.

Rule LR83.10k. Appointment of counsel.

Whenever counsel is to be appointed by these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition, the court may appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. Alternatively, the court may appoint as counsel one or more members of the Bar, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or who has been engaged as an adversary of the respondent-attorney in any manner. Counsel, once appointed, may not resign unless permission to do so is given by the court.

Nothing in this rule limits the court's authority to refer any matter to the appropriate state bar for investigation, prosecution of disciplinary proceedings, or reinstatement.

Rule LR83.10l. Duties of the clerk.

(a) *Obtaining certificate of conviction.* Upon being informed that an attorney practicing before this court has been convicted of any crime, the clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If certificate has not been so forwarded, the clerk shall promptly obtain a certificate and file it with this court.

(b) *Obtaining certificate of disciplinary judgment or order.* Upon being informed that an attorney practicing before this court has been subjected to discipline by another court or a state bar, the clerk shall determine whether a certified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified copy of the disciplinary judgment or order and file it with this court.

(c) *Clerk to inform other jurisdictions.* Whenever it appears that any attorney convicted of any crime, disbarred, suspended, censured, or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk shall, within 10 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the attorney.

(d) *Clerk to inform the National Discipline Data Bank.* The clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney practicing before this court.

Rule LR83.10m. Jurisdiction.

Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure or other sanctions under the Federal Rules of Civil Procedure or these Local Rules.

PART II. LOCAL RULES OF CRIMINAL PRACTICE

X. GENERAL PROVISIONS

Rule LCrR50.1. Prompt disposition of criminal cases.

The Court's *Plan for Prompt Disposition of Criminal Cases* in compliance with the Speedy Trial Act of 1974 (18 U.S.C. § 3161, *et seq.*), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), as approved by the Judicial Council, is a public document available through the office of the clerk of this court. The Court's Plan for the Prompt Disposition of Criminal Cases as it now exists and as it is hereafter amended and approved by the Judicial Council shall have the same force and effect as a local rule of this court.

XI. LOCAL CRIMINAL RULES FOR WHICH THERE ARE NO CORRESPONDING FEDERAL RULES

Rule LCrR57.1. Incorporation of certain local rules of civil practice.

Local Rules of Civil Practice 1.1, 5.3, 5.4, 6.1, 7.1, 7.2, 65.1.1, 72.1, 77.1, 77.3, 79.1, 79.2, 79.4, 80.1, 83.1, 83.2, 83.5, 83.7, 83.8, and 83.9a-m shall apply fully to criminal proceedings, and shall be interpreted consistent with the Federal Rules of Criminal Procedure and other Local Rules of Criminal Practice.

Rule LCrR58.1. Payment of fixed sum in lieu of appearance in certain misdemeanor cases.

Pursuant to Fed. R. Crim.P. 58(d) and in the interest of justice and good court administration, collateral may be posted in lieu of the appearance of an offender for certain misdemeanors under federal statutes and regulations or state statutes made applicable by the Assimilative Crimes Statute (18 U.S.C. § 13). There shall be maintained in the office of the clerk a list of the misdemeanors and fines applicable thereto for which forfeiture of collateral security may be posted.

The posting of collateral signifies that the defendant does not contest the charge nor request a trial. Such collateral shall be administratively forfeited to the United States. Forfeiture of collateral in lieu of personal appearance is not permitted for any listed offense denominated a "mandatory appearance" offense, for an aggravated or major offense, or for multiple offenses arising out of the same facts or sequence of events.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

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RULES OF PRACTICE AND PROCEDURE OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Effective September 1, 2004, with revisions to Chapter 13 Forms revised November 2006.

Appendix C

Local Forms

Index follows Rules.

APPENDIX C

LOCAL FORMS

Local Form 1 **2002**

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

IN RE:	)	Case No. _____
	)	Chapter __
	)	
	)	**NOTICE OF**
	)	**OPPORTUNITY FOR HEARING**
	)	(No-Protest Notice: No Hearing
Tax I.D. No.	)	Will Be Held Unless Request
Debtor(s).	)	For Hearing Is Filed)
_____	)	

TAKE NOTICE that [name of moving party] has filed papers with the Court to [relief sought in motion or objection]. A copy of these paper(s) are included with this Notice or copied on the reverse side of this Notice.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to order [relief sought in motion or objection], or if you want the Court to consider your views on the [motion][objection], then on or before **[DATE RESPONSE DUE]** from the date of this Notice, you or your attorney must do three (3) things:

1. **File with the Court a written response requesting that the Court hold a hearing and explaining your position. File the response at:**

   U.S. Bankruptcy Court
   [Courtroom #]
   [Address]

If you mail your request to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

   [Name/address/fax # of movant's attorney]

[Name/address/fax # of other parties to be served]

3. **Attend the hearing scheduled for [date], [year], at [time] a.m./p.m.** in Courtroom [#], United States Bankruptcy Court, [Court address].

If you or your attorney do not take these steps, **A HEARING WILL NOT BE HELD**, and the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: _____.

_____

[Attorney Name]
[Address]
[Telephone/Fax #s}
[State Bar #]

Local Form 2 Revised 4/22/2003

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
Form for Tender of Order or Judgment

I. Case Name: _____

Base Case No: _____ Chapter: _____ Adv. Proc. #: _____

Adv. Proc. Name: _____

Primary Relief: _____

****

II. _____ Consent Order _____ Order after "No-Protest Notice" with No Objection or Response

_____ Ex Parte Order Submitted With Motion

_____ Pursuant to Court's Oral Ruling at Hearing on: _____

_____ Other Order _____

****

III. _____ No Opposing Counsel or Party

_____ Form of Order Approved by Opposing Counsel

_____ Date Opposing Party/Counsel was Served with Copy of Proposed Order and this Form: _____.

****

IV. Order will be Tendered to the Court on: _____

****

V. _____ Return filed order in enclosed self-addressed, stamped envelope to attorney who prepared order.

****

VI. Attorney Preparing Order: _____

Address: _____

City, State and Zip: _____

Telephone and Bar Number: _____

Representing: _____

****

INFORMATION MUST BE COMPLETED IN EACH SECTION (I-VI) OR THE COURT MAY REJECT THE ORDER AS SUBMITTED

Pursuant to Local Rule 9021-1 form to be tendered with proposed order or judgment.

Local Form 3 **2005**

Debtor(s) _____

DISCLOSURE TO DEBTOR(S) OF ATTORNEYS FEE PROCEDURE FOR CHAPTER 13 CASES IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

After consultation with the undersigned attorney, you have decided to file a petition for relief under Chapter 13 of the United States Bankruptcy Code. Accordingly, you are hereby given notice that pursuant to the local rules of the Bankruptcy Court, the base fee for a Chapter 13 case is established at $_____. Payment of all or part of this fee is included in your payments to the Trustee. The attorney's services included in the base fee are those normally contemplated in a Chapter 13 case. They are as follows:

(a) Preparation and filing of your petition, schedules, supplemental local forms, Chapter 13 Plan, and mailing matrix.
(b) Drafting and mailing notice to creditors advising of filing of case, including a copy of your Chapter 13 Plan.
(c) Drafting and mailing to you a letter regarding your attendance at the Section 341 meeting and your other responsibilities.
(d) Preparation for and attendance at Section 341 meeting.
(e) Review of order confirming plan and periodic reports.
(f) Review of Trustee's motion for allowance of claims.
(g) Maintaining custody and control of case files.
(h) Service of orders on all affected parties.
(i) Verification of your identity and social security number
(j) Defending objections to confirmation of your Chapter 13 Plan.

The base fee shall also include the following services to the extent they are requested or reasonably necessary for your effective representation:

(a) Preparation and filing of proofs of claim on your behalf for your creditors.
(b) Drafting and filing objections to scheduled and unscheduled proofs of claim.
(c) Assumptions and rejections of unexpired leases and executory contracts.
(d) Preparation for and attendance at valuation hearings.
(e) Motions to transfer venue.
(f) Requesting copies of proofs of claim from Trustee.
(g) Consultation with you regarding obtaining postpetition credit (no motion filed).
(h) Motions to avoid liens.
(i) Calculation of plan payment modifications (no motion filed).
(j) Adding creditor addresses to mailing matrix as necessary.
(k) Responding to written creditor contacts regarding plan terms, valuation of collateral, claim amounts, and the like.
(l) Responding to your contacts regarding changes in your financial and personal circumstances and advising the Court and the Trustee of the same.
(m) Communicating with you regarding payment defaults, insurance coverage, credit disability, and the like.
(n) Obtaining and providing the Trustee with copies of documents relating to lien perfection issues.
(o) Notifying creditors of entry of discharge.
(p) Notifying creditors by certified mail of alleged violations of the automatic stay.
(q) Drafting and mailing letters regarding voluntary turnover of property.
(r) Review of documents in relation to the use or sale of collateral (no motion filed).
(s) Providing you with a list of answers to frequently asked questions and other routine communications with you.

In some Chapter 13 cases, legal services which are beyond those normally contemplated must be performed. These legal services are not covered by the base fee. These "non-base" services include the following:

(a) Abandonment of property post-confirmation.
(b) Motion for moratorium.
(c) Motion for authority to sell property.
(d) Motion to modify plan.
(e) Motion to use cash collateral or to incur debt.
(f) Defense of motion for relief from stay or co-debtor stay.
(g) Defense of motion to dismiss filed after confirmation of your plan.
(h) Non-base fee requests.
(i) Stay violation litigation, including amounts paid as fees by the creditor or other party.
(j) Post-discharge injunction actions.
(k) Adversary proceedings.
(l) Wage garnishment orders.
(m) Turnover adversaries.
(n) Conversion to Chapter 7.
(o) Motions to substitute collateral.
(p) Any other matter not covered by the base fee.

For such "non-base" services you will be charged on the basis of attorney's time expended at the rate of $_____ per hour plus the amount of expenses incurred (such as court fees, travel, long distance telephone, photocopying, postage, etc.). Such "non-base" fees are chargeable only after the same are approved by the Bankruptcy Court. Except as set forth below, before any such fees are charged you will receive a copy of my motion filed in the Court requesting approval of any such "non-base" fees as well as a notice explaining your opportunity to object if you do not agree with the fee applied for. Any fees awarded for "non-base" services will be paid to the undersigned attorney from your payments to the Trustee in the same way as payment of "base" fees. **It is possible that "non-base" fees approved by the Court may cause your payment to the Trustee to be increased, or the term of your Chapter 13 plan extended**. Whether or not a payment increase or an extension will be necessary depends upon the facts of your case. If a payment increase is necessary because of a court- approved "non-base" fee, the Trustee will notify you of the amount of the increase.

In the Court's discretion, a debtor's attorney in a Chapter 13 proceeding may request, in open court, and without any other notice, "non-base" fees for the following services in amounts not exceeding those shown below. Without other notice, the debtor's attorney may also request up to $1.00 for each item noticed to creditors as expense for postage, copying, and envelopes. These fees may be adjusted (increased) by the Court at a later date, and, if so, those adjusted fees will then be charged.

(a)	Defense of motion to dismiss.	$200
(b)	Motion to modify and order, including motion for moratorium.	$350
(c)	Substitution of collateral.	$450
(d)	Prosecution or defense of motion for relief from stay or co-debtor stay and order.	$450
(e)	Motion for authority to sell property and order.	$450

ACKNOWLEDGMENT

I hereby certify that I have read this notice and that I have received a copy of this notice.

Dated:

Debtor's Signature

Dated:

Spouse's Signature

I hereby certify that I have reviewed this notice with the debtor(s) and that the debtor(s) have received a copy of this notice.

Dated:

Attorney

Local Form 4 **Revised 2004**

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

NAME:	)	
	)	
	)	**Case #**
	)	
	)	
	)	**Chapter 13**
	)	
Debtor(s).	)	

CHAPTER 13 PLAN SUMMARY INCLUDING MOTION(S) FOR VALUATION; MOTION(S) TO AVOID CERTAIN LIENS; ASSUMPTION AND REJECTION OF EXECUTORY CONTRACTS; AND NOTICE OF OPPORTUNITY FOR HEARING ON CONFIRMATION OF THE PLAN INCLUDING ALL MATTERS AS SET FORTH IN THE PLAN

The following is a summary of the Chapter 13 plan proposed by the above-named debtor(s). The plan may include in its provisions certain motions to avoid liens and motions for valuation of collateral securing claims. If any such motions are included in the proposed plan of the debtor(s), they are specifically included in this plan summary.

Your rights may be affected. You should read the plan summary carefully, including any motions contained in the plan, and discuss them with your attorney, if you have one, in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to confirm the proposed plan of the debtor(s), including any of the motions included in the plan, or if you want the Court to consider your views on these matters, then you or your attorney must file with the Court a written objection to confirmation and request for hearing on confirmation at the following address: Clerk, U.S. Bankruptcy Court, P.O. Box 34189, Charlotte, N.C. 28234-4189. Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fifteen (15) days following the conclusion of the meeting of creditors. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time, and location of the hearing. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions.

CHAPTER 13 PLAN SUMMARY

1. The plan proposes payments of _____ per month for _____ months or for a ___% payout to the general unsecured creditors.

2. From the payments received, the trustee shall make disbursements as follows and in the following order of priority:

a. **ADMINISTRATIVE CLAIMS:**

(1) Trustee's fees and costs (up to a maximum of 10%), court costs, and other administrative claims as ordered paid by the court.

(2) Attorney's fees. The attorney for the debtor has received $_____ of the total base attorney fee of $_____. The remainder of the base fee shall be paid through the plan by the trustee in the sum of one-half of the amount of each of the first two plan payments (up to a maximum of $350.00 attributable to attorney's fees per plan payment) with any balance of the base fee and any allowed non-base fees to be paid through the plan on a pro-rata basis with allowed secured claims.

b. **SECURED CLAIMS:**

HOLDERS OF SECURED CLAIMS (INCLUDING ANY ARREARAGES ON FULLY SECURED CLAIMS) WHICH ARE FILED WITH THE TRUSTEE SHALL RETAIN THE LIENS SECURING SUCH CLAIMS UNTIL DISCHARGE AND SHALL BE TREATED AND PAID AS SECURED CLAIMANTS TO THE EXTENT OF THE COLLATERAL VALUE SET FORTH IN THE MOTION TO VALUE CLAIMS SET FORTH HEREIN. **TO THE EXTENT THAT A CREDITOR'S CLAIM EXCEEDS THE COLLATERAL VALUE, AND THUS THAT CREDITOR'S CLAIM IS UNDERSECURED, IT SHALL BE TREATED AND PAID IN THE SAME MANNER AS GENERAL UNSECURED CLAIMS.**

CLAIMANT	CLAIM AMOUNT	COLLATERAL VALUE	UNSECURED PORTION

c. **PRIORITY CLAIMS**

The debtor shall make full payment in deferred cash payments of all claims entitled to priority under 11 U.S.C. §§ 507 and 1322. To the extent such claims are not entitled to priority, they shall be treated and paid in the same manner as general unsecured claims.

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CLAIMANT	PRIORITY AMOUNT	CLAIMANT	PRIORITY AMOUNT

d. **GENERAL UNSECURED CLAIMS**

The plan provides for the pro-rata payment of all non-priority, unsecured claims after payment of all administrative, secured and priority claims as set forth above. If the plan proposes payments for a term of months, the anticipated payout to general unsecured creditors is approximately ___%.

3. **Special Plan Terms**

a. **SEPARATE CLASSIFICATIONS OF UNSECURED CLAIMS**

The following general unsecured claims shall be separately classified and paid in full:

CLAIMANT	CLAIM AMOUNT	REASON FOR CLASSIFICATION

b. **PROPERTY TO BE SURRENDERED**

The debtor shall surrender the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditor's allowed claims. To the extent that the collateral does not satisfy such a creditor's claim, the creditor shall hold a general unsecured claim. All such unsecured deficiency claims must be filed with the trustee to be included for payment.

CLAIMANT	CLAIM AMOUNT	COLLATERAL BEING SURRENDERED

c. **LIEN AVOIDANCE**

Liens shall be avoided pursuant to 11 U.S.C. §522(f) as set forth herein.

d. **EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES**

(1) The following executory contracts and/or unexpired leases shall be **assumed:**

(2) The following executory contracts and/or unexpired leases shall be **rejected:**

e. **DIRECT PAYMENTS BY DEBTOR**

The debtor(s) will make regular payments directly to the following creditors:

CLAIMANT	MONTHLY PAYMENT

f. **PAYMENTS UPON TAX CLAIMS**

Any payments made to a taxing authority during the term of the plan from either the trustee, directly from the debtor(s), from a tax refund, or from any source whatsoever shall be applied first to secured tax claims, second to priority tax claims, and last to general unsecured tax claims without priority.

g. **OTHER SPECIAL TERMS**

4. **Effect of Discharge**

UPON THE DEBTOR(S)' COMPLETION OF THE CONFIRMED PLAN (AS PROPOSED HEREIN OR AS SUBSEQUENTLY MODIFIED), ALL CLAIMS PROVIDED BY THE PLAN WILL BE DISCHARGED AS PROVIDED FOR IN 11 U.S.C. §1328, INCLUDING THE CANCELLATION OF LIENS WHICH SECURE CLAIMS THAT ARE PAID IN THE PLAN BY PAYMENT OF THE VALUE OF THE SECURED CLAIM (AS SET FORTH HEREIN OR AS DETERMINED AT THE §341 MEETING OF CREDITORS), AND INCLUDING THE CANCELLATION OF LIENS THAT ARE AVOIDED AS PROVIDED FOR HEREIN.

MOTION TO VALUE LIENS

Included in the debtor(s) schedule of debts are purported secured claims as follows:

CREDITOR	DEBT AMOUNT	COLLATERAL	COLLATERAL VALUE	UNDERSECURED AMOUNT

The debtor(s) hereby moves the Court pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure to value the collateral of each of the above-stated creditors at the collateral value stated. TO THE EXTENT THAT THE AMOUNT OF THE DEBT OF ANY SUCH CREDITOR EXCEEDS THE STATED COLLATERAL VALUE, THE DEBTOR(S) HEREBY MOVES THE COURT THAT SAID DIFFERENCE BE TREATED IN THE CHAPTER 13 PLAN AS A GENERAL UNSECURED CLAIM WITHOUT PRIORITY. THE DEBTOR(S) FURTHER MOVES THE COURT THAT THE LIEN OF EACH CREDITOR LISTED UPON THE COLLATERAL LISTED BE SATISFIED UPON PAYMENT OF THE COLLATERAL VALUE AND THE ISSUANCE OF THE DEBTOR(S)' DISCHARGE.

MOTION TO AVOID NON-POSSESSORY NON-PURCHASE MONEY SECURITY INTEREST IN HOUSEHOLD GOODS AND PERSONAL ITEMS

The debtor(s) is/are indebted to the following creditors in the amount stated. As security for the debt, each such creditor insisted upon, and the debtor(s) executed, a waiver of exemption of certain property, and a security agreement granting said creditor(s) a non-possessory, non-purchase money security interest in household goods which is property delineated by 11 U.S.C. §522(f)(2) and which is held primarily for the personal, family, or household use of the debtor(s) or a dependent of the debtor(s). The debtors(s) believe that a financing statement has been properly recorded evidencing each such creditors(s)' security interest and liens:

CREDITOR	ACCOUNT/I.D.	DEBT AMOUNT	DESCRIPTION OF PROPERTY

The debtor(s)' interest in any item of property referred to above does not exceed the value claimed exempt. The money so borrowed from each such creditor does not represent any part of the purchase money of any of the articles covered by each such creditor's security agreement. The existence of each such creditors(s) lien on the debtor(s)' household goods and personal items impairs the exemptions to which the debtor(s) would be entitled under 11 U.S.C. §522. The debtor(s) moves the Court for the cancellation and avoidance of the security interest of each such creditor in the debtor(s) personal and household goods, effective upon discharge.

MOTION TO AVOID JUDICIAL LIEN(S)

Judgment(s) were obtained by the creditors listed below in cases before the General Court of Justice of the State of North Carolina, and said Judgments have been recorded in the Public Registry(ies) as follows:

CREDITOR	JUDGMENT BOOK AND PAGE	REGISTRY	JUDGMENT DATE	JUDGMENT LIEN AMOUNT

The above-stated Judgment(s) created lien(s) on the real property in which the debtor(s) has an interest, which real property is more specifically described as _____. The value of the debtor(s)' interest in this real property is _____. The aforesaid lien(s) constitutes judicial lien(s) under 11 U.S.C. §522(f)(1). The property which this judicial lien encumbers is property which the debtor(s) are entitled to exempt under 11 U.S.C. §522 and the claimed amount of this exemption is $_____. The existence of this judicial lien impairs the exemption to which the debtor(s) are entitled under 11 U.S.C. §522.

The debtor(s) respectfully moves the Court to issue an order compelling the above-stated creditors to cancel and to avoid their judicial lien(s) upon the real property described herein, effective upon discharge.

GENERAL PROVISIONS

1. To receive payment from the trustee, a secured creditor must file a proof of claim. Secured claims which are not filed within the time period required by Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the Court.

2. Confirmation of this plan does not bar a party in interest from objecting to a claim which is not filed in accordance with Federal Bankruptcy Rules 3001 or 3002.

3. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within 120 days after the removal of the property from the protection of the automatic stay. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or release to another lien holder.

4. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution of the plan.

I declare under penalty of perjury that the information provided in this Chapter 13 Plan Summary, including Motion(s) for Valuation; Motion(s) to Avoid Certain Liens; and Assumption and Rejection of Executory Contracts; as to all matters set forth herein are true and correct.

Dated _____ _____

Debtor's Signature

Dated _____ _____

Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated _____ _____

Attorney for the Debtor(s)

Local Form 4 **Revised January 2007**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
***[insert correct division name]* DIVISION**

In re:	)	Case No. - - -
	)	
	)	Chapter 13
	)	
	)	
Debtor(s)	)	

CHAPTER 13 PLAN, INCLUDING NOTICE OF MOTION(S) FOR VALUATION; MOTION(S) TO AVOID CERTAIN LIENS; MOTION(S) FOR ASSUMPTION AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND NOTICE OF OPPORTUNITY FOR HEARING ON CONFIRMATION OF THE PLAN INCLUDING ALL MATTERS AS SET FORTH IN THE PLAN
FOR CASES FILED ON OR AFTER FEBRUARY 1, 2007

The following is the Chapter 13 plan proposed by the above-named debtor(s). The plan may also include in its provisions certain motions to avoid liens, motions for valuation of collateral securing claims, and motions to assume or reject executory contracts and unexpired leases. (Check the motions applicable to this plan.)

( ) **Motion to Value Liens Includes Valuation of Property Securing A Claim**
( ) **Motion to Value Liens includes Valuation of Property Securing A Claim in an Amount Less than the Amount of the Claim**
( ) **Motion to Avoid Liens §522(f)**
( ) **Motion to Assume Executory Contracts(s) and Unexpired Leases**
( ) **Motion to Reject Executory Contract(s) and Unexpired Leases**
( ) **No motions applicable to this plan**

TAKE NOTICE: Your rights may be affected. You should read the plan carefully, including any motions contained in the plan, and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to confirm the proposed plan of the debtor(s), including any of the motions included in the plan, or if you want the court to consider your views on these matters, then you or your attorney must file with the Court a written objection to confirmation and request for hearing on confirmation at one of the following addresses:

Cases filed in the **Charlotte, Shelby or Wilkesboro** Divisions:
Clerk, U.S. Bankruptcy Court, P.O. Box 34189, Charlotte, N.C. 28234-4189

Cases filed in the **Asheville or Bryson City** Divisions:
Clerk, U.S. Bankruptcy Court, Room #112, 100 Otis Street, Asheville, N.C. 28801

Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fifteen (15) days following the conclusion of the combined hearing on plan, Section 341(a) meeting of creditors, and trustee's recommendation for the plan's confirmation. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 Trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing on the objection. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions.

Any creditor's failure to object to confirmation of the proposed plan shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).

PLAN PAYMENTS; ADMINISTRATIVE COSTS; PROOFS OF CLAIM

1. **a. The plan proposes payments of $_____ per month for _____ months or**

   b. The plan proposes payments of $_____per month for _____% (percentage) payment to general unsecured creditors.

   c. If applicable, the plan will also be funded by:_____
   _____

2. **The plan payments shall commence within ten (10) days of the case file date.**

3. **Administrative Costs**

   a. Attorney's Fees. The attorney for the debtor(s) has received $_____ of the total base attorney fee of $_____. The remainder of the base fee shall be paid through the plan by the trustee on a pro rata basis with required monthly payments to allowed secured claimants.

   b. Trustee's Costs. The trustee shall be entitled to reimbursement of fees and costs up to the statutory maximum on each disbursement made by the trustee, regardless of whether it is paid prior to or following confirmation.

4. **Filing of Proofs of Claim**

   a. The trustee shall only distribute payments, including adequate protection payments, to creditors who have actually filed proofs of claim (including adequate proof of security) with the Court that are deemed allowed pursuant to 11 U.S.C. Section 502(a). However, if a creditor does not file a timely proof of such creditor's claim, then either the debtor(s)

or the trustee may file such a claim as provided for by 11 U.S.C. Section 501(c) and in that event such claim shall be deemed the claim for all purposes under the plan.

b. The trustee shall mail payments to the address provided on the proof of claim unless the claimant provides the trustee with another address in writing for payments to be sent. If the claim is assigned or transferred, the trustee shall continue to remit payments to the original claimant until a formal notice of assignment or transfer is filed with the Court.

CLASSIFICATION AND TREATMENT OF CLAIMS

5. **PRIORITY CLAIMS.** All claims entitled to priority under 11 U.S.C. Sections 507 and 1322 shall be paid in full in deferred cash payments, except for priority claims under Section 507(a)(1)(B), unless the holder of the particular claim agrees to a different treatment of such claim.

a. Domestic Support Obligations ("DSOs")

All post-petition DSOs, including post-petition DSOs assigned to a governmental unit, will be paid directly to the holder by the debtor(s) or to the assignee of the claim and not through the Chapter 13 Trustee unless otherwise specified under the "Special Terms" section of the plan.

i. [ ] None

ii. The name, address and phone number including area code of the holder of any DSO as defined in 11 U.S.C. Section 101(14A). Pursuant to 11 U.S.C. Section 112, the names of minor children should not be disclosed.

Name	Address (incl. city, state, zip code)	Telephone
1.		
2.		

b. DSO Pre-Petition Arrearages owed to DSO Holders Under 11 U.S.C. Section 507(a)(1)(A), or assigned to a governmental unit, to be paid in full through the Chapter 13 plan on a pro-rata basis after payment of secured claims and the attorney fee and prior to payment of any non-DSO priority claim, unless a different treatment is proposed under the "Special Terms" section of the plan:

i. [ ] None

ii. Name of holder	Amount of Arrearage
1.	
2.	

c. Priority Claims Other Than DSOs

All priority claims other than DSOs shall be paid in full on a pro rata basis after the payment in full of all DSO priority claims.

i. [ ] None

ii. The names and amounts of all claims entitled to priority under 11 U.S.C. Section 507, other than DSOs:

Name	Claim Amount
1.	
2.	

6. SECURED CLAIMS

Other than secured claims that are to be paid as long-term debts pursuant to 11 U.S.C. Section 1322(b)(5), or that are to be paid directly by the debtor(s), the trustee shall pay the value of all allowed secured claims, on a pro rata basis in monthly amounts sufficient to provide adequate protection.

The trustee, on behalf of the debtor(s), will reserve pre-confirmation adequate protection payments for creditors holding purchase money security interests in personal property who have actually filed proofs of claim, and shall disburse said adequate protection payments with the first post-confirmation distribution to creditors, except that the trustee shall not be required to provide for any pre-confirmation adequate protection payments on account of any allowed secured claim with a secured value of less than $2,000.00. The adequate protection payments shall be equal to 1% of the value of the collateral as provided for in the proof of claim.

To the extent that the valuation provisions of 11 U.S.C. Section 506 do not apply to any of the claims listed below, the creditor's failure to object to confirmation of the proposed plan shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).

a. For purposes of the plan, the treatment of each claim is specified below. Treatment shall be one of the following: (1) Direct payment by the debtor(s): "**Direct**"; (2) Payment in full by the Chapter 13 Trustee through the plan: "**In Full**"; (3) Payment of the value of the collateral by the Chapter 13 Trustee through the plan: "**Bifurcate**"; (4) Debtor(s) will surrender the collateral: "**Surrender**", or (5) File proceeding to determine validity of lien: "**Avoidance**."

Creditor	Collateral	Value of Coll.	Claim Amt.	Treatment	Int. Rate
1.					
2.					
3.					
4.					

To the extent that any of the claims referred to above are secured by mortgage loans on real property, and such claims are scheduled to be paid by the trustee, then and in that event the Debtors will no longer be making any mortgage payments to any of the designated mortgage

servicers and/or their successors and assigns and all such entities are hereby authorized to provide account information to the Chapter 13 Trustee.

b. For secured claims to be paid directly by the debtor(s), state below the amount of pre-petition arrearages to be paid through the Chapter 13 Trustee:

Creditor	Collateral	Pre-pet. arrearage	Int. Rate.
1.			
2.			
3.			

If the treatment option for secured claims is "**Surrender**", the debtor(s) surrenders any interest in the collateral securing the claims of the specified creditors. Upon confirmation, the automatic stay will be deemed lifted for the collateral and the creditor need not file a motion for relief from stay in order to repossess, foreclose upon or sell the collateral. Nothing herein is intended to lift any applicable co-debtor(s) stay, or to abrogate the debtor(s)' state law contract rights.

7. General Unsecured Claims Not Separately Classified

General unsecured claims shall be paid on a pro rata basis with payments to commence after the payment of all administrative, secured and priority unsecured claims in full.

8. Special Terms

a. [ ] None

b. Special Treatment of Unsecured Claims

c. Other Direct Payments to Creditors Other than Section 6.

d. Other Special Terms

9. Plan Motions:

Motion to Value All Liens in Paragraph #6a

The debtor(s) hereby moves the Court to value the collateral of each of the creditors described in paragraph 6a. (except those creditors whose claims are classified to be paid directly) at the collateral value stated. To the extent that the amount of the debt of any such creditor exceeds the stated collateral value, the debtor(s) hereby moves the Court that said difference be treated in the Chapter 13 plan as a general unsecured claim without priority. The debtor(s) further moves the Court that the lien of each creditor listed upon the collateral listed hereinabove be satisfied upon payment of the collateral value and the issuance of the debtor(s) discharge.

Motion to Avoid Non-Possessory, Non-Purchase Money Security Interests in Household Goods and Personal Items

The debtor(s) is indebted to the following creditors in the amounts stated. As security for the debt, each such creditor insisted upon, and the debtor(s) executed, a waiver of exemption of certain property, and a security agreement granting said creditors a non-possessory, non-purchase money security interest in household goods which is property delineated by 11 U.S.C. Section 522(f)(2) and which is held primarily for the personal, family or household use of the debtor(s) or a dependent of the debtor(s). The debtor(s) believes that a financing statement may have been properly filed evidencing each such creditor's security interest and liens:

Creditor	Account/I.D.	Debt Amount	Description of Property
1.			
2.			

The debtor(s)' interest in any item of property referred to above does not exceed the value claimed as exempt. The money borrowed from each such creditor does not represent any part of the purchase money of any of the items covered by each such creditor's security agreement. The existence of each such creditor's lien on the debtor(s)' household goods and personal items impairs the exemptions to which the debtor(s) would be entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law. The debtor(s) moves the Court for the cancellation and avoidance of the security interest of each such creditor in the debtor(s)' personal and household goods, effective upon discharge.

Motion to Avoid Judicial Liens

Judgments were obtained by the creditors listed below in cases before the General Court of Justice of the State of North Carolina, and said judgments have been recorded in the Public Registry as follows:

Creditor	Judgment Book And Page	Registry	Judgment Date	Judgment Lien Amount
1.				
2.				

The above-stated judgments created liens on the real property in which the debtor(s) has an interest, which real property is more specifically described as _____. The value of the debtor(s)'s interest in this real property is $_____. The aforesaid liens constitute judicial liens under 11 U.S.C. Section 522(f)(1). The property which this judicial lien encumbers is property which the debtor(s) is entitled to exempt under 11 U.S.C. Section 522 and the claimed amount of this exemption is $_____. The existence of this judicial lien impairs the exemption to which the debtor(s) is entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law.

The debtor(s) respectfully moves the Court to issue an order compelling the above-stated creditors to cancel and avoid their judicial liens upon the real property described herein, effective upon discharge.

Motion to Assume or Reject Executory Contracts and Unexpired Leases

a. The debtor(s) moves to assume or reject the following executory contracts and unexpired leases. If assumed, payments due after the filing of the case will be paid directly by the debtor(s) rather than by the trustee.

b. Unless otherwise provided, the debtor(s) proposes to promptly cure any pre-bankruptcy defaults on the assumed leases or contracts over a period of _____months, with said payments to be made by the trustee.

Creditor	Assume or Reject	If Assumed, Amount of Arrearage paid in Plan
1.		
2.		

General Provisions

1. To receive payment from the trustee, either prior to or following confirmation, a secured creditor must file a proof of claim. Secured claims which are not filed within the time period required by Federal Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the Court.

2. Confirmation of this plan does not bar a party in interest from objecting to a claim which is not filed in accordance with Federal Bankruptcy Rules 3001 or 3002.

3. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within one-hundred twenty (120) days after the removal of the property from the protection of the automatic stay. For purposes hereof, the removal date shall be the date of the entry of the order confirming the plan, modifying the plan, or granting relief from stay. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or release to another lien holder.

4. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution and for any other purpose under the plan.

5. Property of the estate includes all of the property specified in 11 U.S.C. Section 541 and all property of the kind specified in such section acquired by the debtor(s) after commencement of the case but before the case is closed, dismissed or likewise converted to one under another chapter of the Code.

6. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the trustee on the pre-petition arrearages, if any, only to such arrearages; to deem the pre-petition arrearages as contractually cured by confirmation; to apply the direct mortgage payments, if any, paid by the trustee or by the debtor(s) to the month in which they were made under the plan or directly by

the debtor(s), whether such payments are immediately applied to the loan or placed into some type of suspense account; to notify the trustee, the debtor(s) and the attorney for the debtor(s) of any changes in the interest rate for an adjustable rate mortgage and the effective date of the adjustment; to notify the trustee, the debtor(s) and attorney for the debtor(s) of any change in the taxes and insurance that would either increase or reduce the escrow portion of the monthly mortgage payment; and to otherwise comply with 11 U.S.C. Section 524(i).

7. All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case.

I declare under penalty of perjury that the information provided in the Chapter 13 Plan, including Motion(s) to Value Liens; Motion(s) to Avoid Certain Liens; and Motion(s) for Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated_____ _____
Debtor's Signature

Dated_____ _____
Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated_____ _____
Attorney for the Debtor(s)

Attorney Instructions: Request for Certificate of Discharge

A Certificate of Discharge should now be requested electronically by docketing a request in ECF. The requesting party no longer needs to prepare the Local Form 5 prior to docketing. The new event can be accessed under **Bankruptcy/Other/Request for Certificate of Discharge.**

Follow the steps below to request a certificate of discharge.

STEP 1 Access the Bankruptcy Events List. **(See Figure 1)**

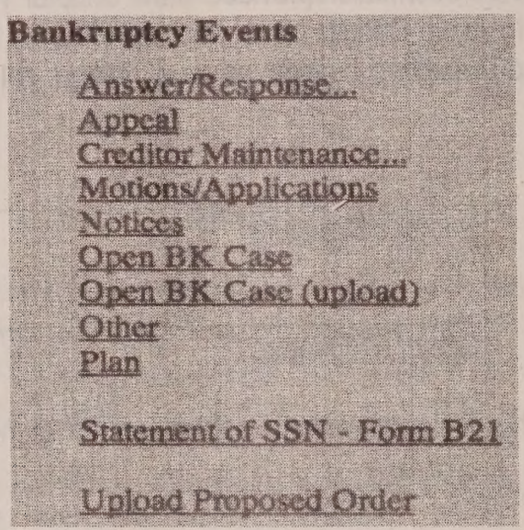

Figure 1

- Select Other.
- Type in the case number.
- Click [Next].
- Select the party represented.
- Click [Next].

STEP 2 The event list will display. **(See Figure 2)**

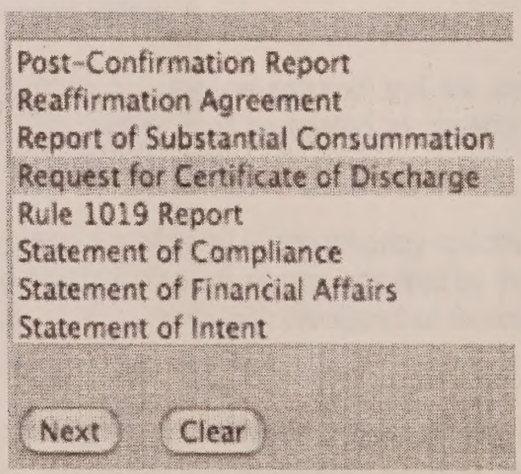

Figure 2

- Select the **Request for Certificate of Discharge** event code.
- Click [Next].

The event will verify that a discharge has been issued in the case.

If the case does not contain a discharge, the following statement will display. **(See Figure 3)**

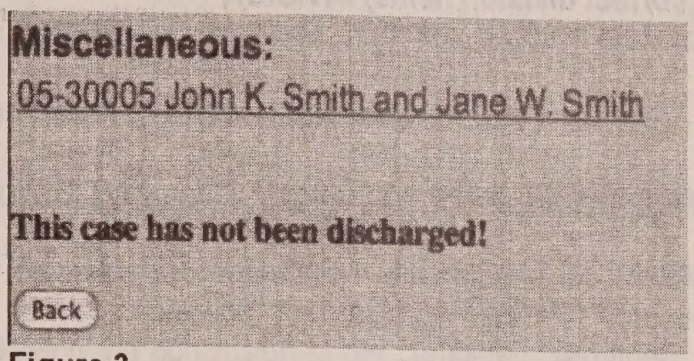

Figure 3

The Request will not be able to be processed.

If a discharge has been issued, the event will proceed to docket the Certificate of Discharge and attach the PDF document.

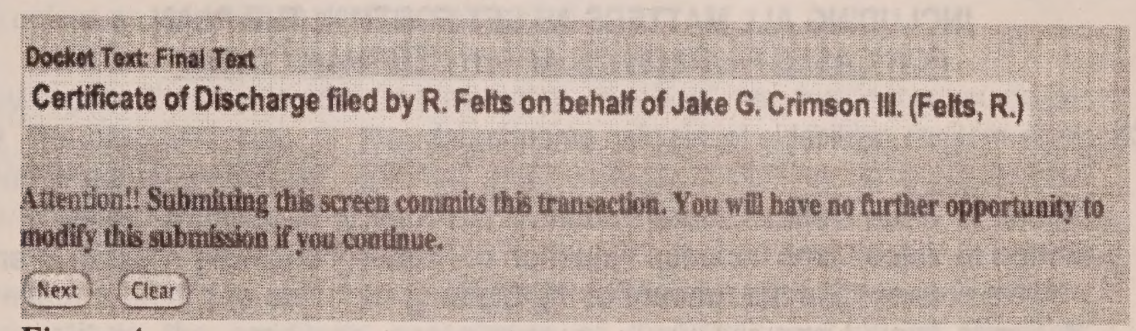
Docket Text: Final Text
Certificate of Discharge filed by R. Felts on behalf of Jake G. Crimson III. (Felts, R.)
Attention!! Submitting this screen commits this transaction. You will have no further opportunity to modify this submission if you continue.
Next
Clear

Figure 4

- The PDF of the Certificate of Discharge is the Court's Local Form 5. The Certificate of Discharge will include the signature of David E. Weich, Clerk of Court.

- A Notice of Electronic Filing containing the PDF file of the Certificate of Discharge will display. The PDF file can be printed from this screen.

Local Form 4A **Revised January 2007**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
***[insert correct division name]* DIVISION**

In re:	)	Case No. - - -
	)	
	)	
	)	Chapter 13
	)	
	)	
Debtor(s)	)	

AMENDMENT TO:

CHAPTER 13 PLAN, INCLUDING NOTICE OF MOTION(S) FOR VALUATION; MOTION(S) TO AVOID CERTAIN LIENS; MOTION(S) FOR ASSUMPTION AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND NOTICE OF OPPORTUNITY FOR HEARING ON CONFIRMATION OF THE PLAN INCLUDING ALL MATTERS AS SET FORTH IN THE PLAN
FOR CASES FILED ON OR AFTER FEBRUARY 1, 2007

Check the motions applicable to this plan amendment:

( ) **Motion to Value Liens Includes Valuation of Property Securing A Claim**
( ) **Motion to Value Liens includes Valuation of Property Securing A Claim in an Amount Less than the Amount of the Claim**
( ) **Motion to Avoid Liens §522(f)**
( ) **Motion to Assume Executory Contracts(s) and Unexpired Leases**
( ) **Motion to Reject Executory Contract(s) and Unexpired Leases**
( ) **No motions applicable to this plan amendment**

The Chapter 13 Plan, including certain motions and other provisions, is hereby **amended** as follows:

TAKE NOTICE: Your rights may be affected. You should read this amendment to the Chapter 13 Plan carefully, including any motions contained in the amended plan, and discuss them with your attorney, if you have one, in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to confirm the proposed plan of the debtor(s) as amended, including any of the motions included in the amended plan, or if you want the court to consider your views on these matters, then you or your attorney must file with

the Court a written objection to confirmation and request for hearing on confirmation at the following addresses:

Cases filed in the **Charlotte, Shelby or Wilkesboro** Divisions:

Clerk, U.S. Bankruptcy Court, P.O. Box 34189, Charlotte, N.C. 28234-4189.

Cases filed in the **Asheville or Bryson City** Divisions:

Clerk, U.S. Bankruptcy Court, Room #112, 100 Otis Street, Asheville, N.C. 28801

Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fifteen (15) days following the conclusion of the combined hearing on plan, ***continued*** meeting of creditors, and trustee's recommendation for the plan's confirmation. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 Trustee at their addresses as they are listed in the notice of the m0eeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s) as amended, including any motions contained in the amended plan, and may enter an order confirming the amended plan and granting the motions.

Any creditor's failure to object to confirmation of the proposed plan as amended shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).

I declare under penalty of perjury that the information provided in the **Amendment** to Chapter 13 Plan, including Notice of Motion(s) to Value Liens; Motion(s) to Avoid Certain Liens; and Motion(s) for Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated_____ _____
Debtor's Signature

Dated_____ _____
Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated_____ _____
Attorney for the Debtor(s)

Local Form 6

UNITED STATES BANKRUPTCY COURT
Western District of North Carolina

Instructions for Filing an
Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments

The fee for filing a case under chapter 7 of the Bankruptcy Code is $274.

If you cannot afford to pay the fee either in full at the time of filing or in installments, then you may request a waiver of the filing fee by completing this application (NCWD Local Form 6) and filing it with the Clerk of Court.

A judge will decide whether you have to pay the fee. By law, the judge may waive the fee **only if** your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. **The poverty guidelines for 2006 are attached.** You may obtain additional information about the poverty guidelines at the United States Department of Health and Human Services website at http://aspe.hhs.gov/poverty.

Required information. All items in the application and attached requested schedules must be answered in order for a proper determination to be made regarding allowance of your waiver of fee. If the question does not apply; write in not applicable or **n/a.** If the amount is zero or none use: **zero, -0-, none**. Sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, each of you must provide information as requested and sign the application. Your failure to timely comply with these requirements may result in the application being **denied.**

If your application is denied, an order will be entered directing the payment of the filing fee in installments.

2006 HHS Poverty Guidelines

Persons in Family or Household	48 Contiguous States and D.C.	Alaska	Hawaii
1	$ 9,800	$12,250	$11,270
2	13,200	16,500	15,180
3	16,600	20,750	19,090
4	20,000	25,000	23,000
5	23,400	29,250	26,910
6	26,800	33,500	30,820
7	30,200	37,750	34,730
8	33,600	42,000	38,640
For each additional person, add	3,400	4,250	3,910

SOURCE: *Federal Register*, Vol. 71, No. 15, January 24, 2006, pp. 3848-3849

Mar. 06

Local Form 6
Feb. 2006

UNITED STATES BANKRUPTCY COURT
Western District of North Carolina

In re:

Chapter 7

Debtor(s). Case No._____

Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments

Part A. Family Size and Income

1. Including yourself, your spouse, and dependents you have listed or will list on **Schedule I, Current Income of Individual Debtors**, how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.)

   Number of people in family: _____

2. Restate the following information that you provided, or will provide, on **Line 16 of Schedule I, Current Income of Individual Debtor**. Attach a completed copy of Schedule I, if it is available.

   Total Combined Monthly Income (line 16 of Schedule I): $_____

3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include income already reported in Question 2. If none, enter $0.

   Monthly net income of dependants: $_____

4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3.

   Total of amounts in question 2 and question 3: $_____

5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months?

   Yes ____ No ____ If yes, explain: _____

   _____

Part B. Monthly Expenses

6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses.

Total monthly expenses from Schedule J or estimate: $_____

7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months?

Yes ____ No _____ If yes, explain: _____

_____

Part C. Real and Personal Property

Either (1) attach completed copies of Schedule A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

8. State the amount of cash you have on hand: $_____

9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Name of Financial Institution	Type of Account	Amount
_____	_____	$_____
_____	_____	$_____

10. State below the assets owned by you. **Do not list ordinary furnishings and clothing.**

Home Address:

_____ Value: $_____

_____ Amount owed on mortgages and liens: $_____

Other real estate address:

_____ Value: $_____

_____ Amount owed on mortgages and liens: $_____

Motor Vehicle Model/year: _____ Value: $_____

Amount Owed: $_____

Motor Vehicle Model/year: _____ Value: $_____

Amount Owed: $_____

Other (Describe):_____ Value: $_____

_____ Amount Owed: $_____

11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money Amount Owed:

_____ $_____

_____ $_____

Part D. Additional Information

12. Have you paid an attorney any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules?

Yes _____ No _____ If yes, how much have you paid? $_____

13. Have you promised to pay or do you anticipate paying an attorney in connections with your bankruptcy case?

Yes _____ No _____

If yes, how much have you promised to pay or do you anticipate paying?

$_____

14. Have you paid **anyone other than an attorney** (such as bankruptcy petition preparer, paralegal, typing service, or other person) any money for services in connection with this case, including the competition of this form, the bankruptcy petition, or schedules?

Yes _____ No _____ If yes, how much have you paid? $_____

15. Have you promised to pay **anyone other than an attorney** (such as bankruptcy petition preparer, paralegal, typing service, or other person) any money for services in connection with this case, including the competition of this form, the bankruptcy petition, or schedules?

Yes _____ No _____

If yes, how much have you promised to pay or do you anticipate paying?

$_____

16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf?

Yes _____ No _____

If yes, explain: _____

_____

17. Have you previously filed for bankruptcy relief during the past eight years?

Yes _____ No _____

Case Number (If known)	Year filed	Location of filing	Did you obtain a discharge? (if known)
_____	_____	_____	Yes___ No_____ Don't know _____
_____	_____	_____	Yes ___ No ____ Don't know _____

18. Please provide any other information that helps to explain why you are unable to pay the filing fee in full or in installments.

19. I (we) declare under penalty of perjury that I (we) cannot currently afford to pay the filing fee in full or in installments and that the foregoing information is true and correct.

Executed on: _____ _____
Date Signature of Debtor

_____ _____
Date Signature of Debtor

Declaration and Signature of Bankruptcy Petition Preparer (See 11 U.S.C. §110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. §110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. §110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section.

_____
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

_____
Social Security No. (Required by 11 U.S.C. §110).

If the bankruptcy petition preparer if not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.

_____

_____
Address

x_____ _____
Signature of Bankruptcy Petition Preparer Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.
A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; U.S.C. § 156

Local Form 7 Revised March 2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
***[insert correct division name]* DIVISION**

IN THE MATTER OF:)
)
) Case Number_____
)
SSN: xxx-xx-_____)
SSN: xxx-xx-_____)

Debtor(s)

DEBTOR(S) CERTIFICATION AND AFFIDAVIT – 341(a) MEETING

The undersigned, being the Debtor(s) referenced above, do hereby certify under oath administered by the Standing Trustee at the 341 meeting of creditors conducted on the date noted below, the following (Check the appropriate option, filling in the information requested as needed. Unless otherwise indicated by you, the responses to these statements apply to both Debtors in a joint case):

A. DOMESTIC SUPPORT OBLIGATION CERTIFICATION

1. ( ) I am not presently required by any judicial or administrative order or statute to pay any domestic support obligation (as defined in 11 USC section 101(14A)); or,

( ) I am required to pay under a domestic support order, and the full information as required by law as to the identity of the holder of this claim is already included in my petition, including the name and full address of the holder, and ages and custodian of any children relating to the support order, and

( ) as of the date of this affidavit, I am current under any obligation created therein; **AND** I specifically agree to notify my Trustee should I miss any payments due or otherwise become delinquent under any support obligation from this day until my confirmation order is entered.

( ) I am presently in arrears as of the date of this affidavit as follows:

( ) I have only those arrears as listed in my petition, and am current post-petition through today; or,

( ) I have arrears as listed in my petition, and have in addition incurred the following post-petition arrearage:

_____

_____

Local Form 7 Revised March 2006

B. TAX RETURN CERTIFICATION

2. ( ) I am not required to file Federal, State or local tax returns because:_____
_____.

3. ( ) I was not required to file Federal, State and local tax returns for the following years (and state reason why not so required): _____
_____
_____

4. ( ) I was required to file Federal, State and local tax returns for all taxable periods ending within the 4- year period prior to the filing of this bankruptcy and I have filed all four years' returns.

C. CERTIFICATION OF WAGES

5. ( ) My petition contains valid and accurate information as regards the last 60 days of payment for wages I have received pre-petition from my employer as listed.

Please note any changes from the information contained in the petition:

_____

_____

_____

By signing this affidavit, I acknowledge that all of the statements contained herein are true and accurate, and the Trustee and Court may rely on these statements for purposes of determining if confirmation of my proposed Plan is allowed under the provisions of the Bankruptcy Code. Any inaccuracy in this affidavit may be grounds for revocation or denial of my confirmation.

Dated this the _____ day of _____, 200__.

_____
Debtor

_____
Debtor

Local Form 8 **November 2006**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

IN RE:	)	
	)	Chapter **13**
Debtor(s)	)	Case No.

DEBTOR'S MOTION FOR ENTRY OF DISCHARGE and CERTIFICATION REGARDING PLAN COMPLETION, and Interim Rule 1007(b)(8) Statement

The debtor makes the following certifications regarding the completion of the plan:

1. I have satisfied all plan requirements.

2. _____ I am not required to pay any Domestic Support Obligations.

   _____ I am required to pay Domestic Support Obligations and all amounts payable under such obligations are paid as of this date, including amounts that were due before the petition was filed, to the extent provided for by the plan.

3. The provisions of 11 U.S.C. §522(q)(1) are not applicable to me.

4. There is not pending a proceeding in which I may be found guilty of a felony of the kind described in Section 522(q)(1)(A) or liable for a debt of the kind described in Section 522(q)(1)(B).

5. I am entitled to a discharge under 11 U.S.C. §1328.

I declare under penalty of perjury that the information provided in this certification and motion is true and correct and move the Court to enter a discharge in this case.

Dated:_____ _____
Debtor

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

IN RE:	)	
	)	Chapter **13**
Debtor(s)	)	Case No.

NOTICE OF OPPORTUNITY FOR HEARING on DEBTOR'S MOTION FOR ENTRY OF DISCHARGE and CERTIFICATION REGARDING PLAN COMPLETION,
[Notice of Interim Bankruptcy Rule 1007(b)(8) Statement Given Pursuant to Interim Bankruptcy Rule 2002(f)(11)]

To: [all creditors on the Court's mailing matrix]:

PLEASE TAKE NOTICE that the debtor has filed a Motion for Entry of Discharge and Certification Regarding Plan Completion. A copy of said pleading is attached hereto.

Any objection must be filed in writing with the Bankruptcy Court and a copy served on the debtor and the attorney for the debtor within 15 days of the date of this notice. If no objections are filed and served in a timely manner, the Court will enter a discharge.

A hearing on any objections filed and served in a timely manner will be held on _____, the _____ day of _____, 2006 at 9:30 a.m. in _____ _____.

Dated:

_____

Attorney Name	or	Pro Se Debtor
Attorney Address		Debtor address
Attorney Tel. No.		(if debtor has
Attorney Bar No.		no attorney)

CERTIFICATE OF SERVICE

This is to certify that I have this day served each party or counsel of record in the foregoing matter with a copy of this pleading. Parties were served by depositing in the United States mail a copy of same in a properly addressed envelope with first class postage thereon. Attorneys were served electronically.

Dated:

_____
Attorney for Debtor / Pro Se Debtor

Local Form 9 **November 2006**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

IN RE:	)	
	)	Chapter 13
Debtor(s)	)	Case No.

DEBTOR'S DISCLOSURE OF INFORMATION REGARDING DOMESTIC SUPPORT OBLIGATIONS

Pursuant to 11 U.S.C. §1302(d), the Chapter 13 debtor provides the following information to the Chapter 13 Trustee:

Debtor's Current Address:_____

Debtor's Current Employer:_____

Debtor's Current Employer's Address:_____

_____

List of debts not discharged under Paragraph 2 or 4 of 11 U.S.C. §523(a):_____

_____

List of debts reaffirmed under 11 U.S.C. §524(c):_____

_____

I disclose under the penalties of perjury that the information provided in this disclosure is true and accurate.

Dated:_____ _____
Debtor

Mail to: Chapter 13 Trustee, [address].

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the clerk of the court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it *do not* replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the clerk of the court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the clerk of the court for each complaint filed. The form is largely self explanatory.

Parties. Give the names of the parties to the adversary proceeding *exactly* as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. ¤ 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause of action fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1 Original Proceeding.
2 Removed from a State or District Court.

1 Reinstated or Reopened.
2 Transferred from Another Bankruptcy Court.

Class Action. Place an "X" in this box if you are filing a class action under Rule 23, Fed. R. Civ. P., as made applicable by Rule 7023, Fed. R. Bankr. P.

Demand. In this space enter the dollar amount being demanded in the complaint. If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Jury Demand. Check the box only if a jury trial is demanded in the complaint.

Bankruptcy Case in Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed, and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and the six digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending, and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession, and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not presented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

Index to Rules of the United States Bankruptcy Court for the Western District of North Carolina

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F

FORMS.
Chapter 13 plan summary.
Amendment to chapter 13 plan, Local Rules Appx C, Form 4A.
Debtor's disclosure re: domestic support obligations, Local Rules Appx C, Form 9.

FORMS —Cont'd
Chapter 13 plan summary —Cont'd
Debtor's motion for entry of discharge and certificate, Local Rules Appx C, Form 8.

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Raleigh, N.C.

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